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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 655

C. H. ACKER, DOING BUSINESS AS C. H. ACKER & COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, HENRY A. WALLACE, SECRETARY OF AGRICULTURE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED DECEMBER 23, 1935.

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Mr. Harold Summers, a witness previously called by the Government, returned to the stand and testified as follows:

Direct examination:

(The witness was shown the large map of the stockyards and was asked to give the location of John Clay & Co. cattle pens.)

They are south of the Exchange Building and quite close to that building. I identify the pens as being block 18 on the map—the pens used by John Clay for the handling of butcher cattle. The steer pens in Block A-17, due south of the Exchange Building, at the request of the Examiner I outline on the official copy of the map which is Government Exhibit No. 6.

There are several general cattle divisions in the stockyards; Armour & Co. have one cow buyer; one bull buyer; one calf buyer in the decision that John Clay & Co. butcher pens are located. I do not know whether these buyers also buy in other divisions, and we do not have ordinarily other than the regular buyers assigned to our division from a particular packing company. If I could not sell to the buyers of Armour & Co. assigned to my division, I would not go to seek a buyer for that company from another division. [fol. 456] I might be out 30 days at a time soliciting business but that was not the usual case. Very often I went into the country on Saturday to solicit and sometimes take both Friday and Saturday; go both by automobile and train. Automobile is the best way of travel. It is not always my custom to use an automobile. In soliciting business in the country I use the automobile of John Clay & Co. and would include points probably up to three or four hundred miles.

I would solicit both the shippers that have previously been shipping to John Clay as well as anyone who had not shipped to the firm. I would spend part of my time visiting those who ship to us in the hope that they would continue shipping to us. If the owners of livestock ask us to appraise livestock we do so; and I would say practically all of them make such requests.

I tell the shippers, the owners of live stock, most every time I look at their stock in the country what I think it will bring if they are shipped to market at a certain time.

It is helpful to the shipper. In arriving at the price I think his livestock will bring on the market the day before or two days before and arrive at their value in that way. We would render that service to an owner of cattle whether he had previously shipped to John Clay or not. It is the policy [fol. 457] to get the shipper in on a good market and we put forth every effort to have him on the market when the market is good and his stock will bring the best price. Lots of times shippers ask for advice about the feeding of cattle; if you would change the feed or feed them a little differently than they are being fed their condition improves, and we try to give the owner the best advice possible.

"Q. Now, Mr. Summers, if you had all the butcher stuff that you could sell and handle, do you believe you could sell 2,500 carloads a year?

Mr. O'Bryan: I object to the question.

Mr. Boyd: Wait a minute. Let me get an objection in the record too. The question is "Could you sell 2,500 cars a year?"

Mr. O'Bryan: No, 'if you had all the butcher stuff,'——

Mr. Miles: 'Do you believe you could sell 2,500 carloads in one year.'

Mr. O'Bryan: I object to the question as being too general. That it is supposed to be a hypothetical question and it does not,—it is not based upon any premise at all as to conditions, the law of supply and demand, price, as to whether they are giving the cattle away or not, as to whether or not *if* they are cattle which are desirable for packers, that they are priced at a price which the packers might have a tremendous cutting profit on, and it is a well known factor in the law of supply and demand that anybody can buy cattle, that they can get at a tremendous cutting profit, that there would be no selling effort at all, because they would all be clustered around, like bees at a hive, trying to buy them, and it does not presuppose any factors. It is a general question and nobody in the world could ever figure out whether they could sell any number of given carloads of cattle a year unless all of the factors which were connected with the sale of those cattle — specifically stated.

Mr. Miles (continuing): Mr. Summers, in addition to the question, as framed, I want you to include 'at the market

price.' We are not assuming now that you are giving them away, but selling at the market price.

[fol. 458] Mr. O'Bryan: Well, now, I will add to my objection, then, that unless the market price on a given day is a factor in the question, unless the receipts are a factor, unless the demand is a factor, unless the market on beef is a factor, unless the cutting profit of the packers is a factor, that the question is too general and has no place in this record.

Mr. Boyd: In addition to the objection Mr. O'Bryan has made to the question, I feel that the answer would not be relevant; that the witness is asked to project himself into the future. He, not being a superman, knows nothing of the conditions that will prevail. He has testified that he does not attempt to indicate to shippers the probable state of a market weeks in advance. He is asked to consider what he could do under conditions which he nor no other man may know, that an ideal condition as may be in the mind of the Government counsel could very readily be changed by a few circumstances that have happened at this market; it may happen at any moment, which would make a guess of that variety of little or no value whatever in the determination of a rate that may be assessed against the shipper as a reasonable price for selling livestock on the Chicago market.

Mr. Miles: Mr. Examiner, I told you this morning that I was not going to continue this argument and I am almost going to keep that promise. I will say for the convenience of counsel, I will ask this witness now to consider not that it is in the future, but consider the year 1932, a year that is now past, assuming that you had all the livestock, that is, butcher stuff that you could handle, could you have sold 2,500 cars, in your opinion?

Mr. Boyd: I object to that.

Mr. O'Bryan: I object to that question again unless the day is made certain; unless all of the economic conditions surrounding the day are specifically set forth; that is, what the price was, what the receipts were, what the demand was, what the beef market was, what the cutting profit to the packer was, what the desirability of purchase was; that the question is entirely general and does not mean anything.

Mr. Boyd: Now, let me state it. The objection that I have to the question is that he is asking the witness if he could

have sold the difference between what he did sell and 2,500 cars of cattle during the year. That does not indicate whether he could have done it spread out through the year or in what manner he would have accomplished his work. That presupposes that John Clay and Company will have a larger volume than they actually did have for this man [fol. 459] to sell. It presupposes the condition where it would be evident instead of needing two butcher salesmen they only needed one and I submit that that is not the test as to whether or not John Clay and Company, in the sale of cattle on this market, actually employ, to the best advantage, the employees that were in their service and it is not a test of efficiency at all and for that reason it is not relevant.

The Examiner: Anything further from either counsel?

Mr. Miles: Silence.

The Examiner: Objection overruled.

Mr. Miles (continuing): Is the question clear to you, Mr. Summers?

A. Yes, well, I cannot answer that question satisfactorily because that all depends on market conditions. During the past year lots of times we are lucky to sell one load of cattle a day with the work you put in. You work from 6:30 in the morning until 3 o'clock in the afternoon trying to sell cattle and you just could not get anywhere with it, and I don't see where any man could ever sell anywhere near the amount you state.

Q. Did you finish your answer?

A. Yes, sir.

Q. Will the reporter read the answer, please?

(Whereupon the answer was read.)

Q. And that is the best answer that you can make in your own honest judgment?

A. Yes, it is.

Q. It is true, is it not, Mr. Summers, that while you have stated that on some days a man would be lucky to sell one load that on other days he could sell a great number of loads?

A. Not a great number.

Q. Will you define 'a great number' as you use it?

Mr. O'Bryan: I object to this form of questioning by Government counsel. It is simply an attempt to try and

[fol. 460] fix some figure in the record and the witness has stated the facts. Now, the facts are what this record is after. It is not conjecture. It is not some figure that the witness would pick out of the air.

Mr. Miles: Mr. Examiner——

Mr. O'Bryan: I could give him a guess and give him a figure.

Mr. Miles: I have not the slightest doubt of that, sir.

Mr. O'Bryan: Unless all the conditions are set out, it is perfectly clear whether—I want it understood that by this I am not coaching the witness. This is simply basic on the basis of the law of supply and demand and unless all the factors are given under a certain set of given facts, it is not within the bounds of human conjecture to tell what anybody can or cannot do.

Mr. Miles: That, sir, is not the law, has never been and never will be.

Mr. O'Bryan: Well, it is about time, then, it should be.

(Whereupon the question was read.)

The Examiner: Objection overruled, and the question is: Will you define 'a great number' as you use it?

Mr. Miles (continuing): Did you have some figure in mind or approximately?

Mr. Boyd: I object to the question. Government counsel used 'a great number' also in his question.

Mr. Miles: And Government counsel is not up here as a witness.

Mr. Boyd: Which reminds me of once when a salesman said he could sell a myriad of cattle and someone asked him — a myriad is.

Mr. Miles: If the question is annoying or embarrassing to the witness, he can say so.

Mr. Boyd: It seems to me that is not a proper question to ask this witness as to what he considers is a great number.

[fol. 461] Mr. Miles: We frequently use the expression 'a great number' or a 'large number' and we have something in mind. If the witness does not have any figure in mind, it is perfectly all right to say it.

Mr. Boyd: All right, go ahead and answer.

Mr. O'Bryan: I submit the proper form of question is not what could you sell if all of the surrounding circumstances were ideal, but what, if you know, is the greatest number you have ever sold on any given day, so that coun-

sel for respondents then can on cross examination bring out the circumstances surrounding the possibility of a sale of that amount on a given day?

Mr. Boyd: I submit, Mr. Examiner, that question would be more objectionable to me than those he has already asked. I don't think the most he has sold has anything to do with it. I think what is pertinent is what can he do efficiently and properly in view of the circumstances surrounding John Clay and Company's business. They certainly sell as many as they can get to sell and if they have not enough salesmen, they should get some more. The question is whether or not this salesman is properly using his time and properly does as much work assigned to him as would be reasonably expected that a good salesman would do under a given period of time under the circumstances under which he operates. Beyond that, I think the witness should not be permitted to testify or guess.

Mr. Miles: Mr. Examiner, I will strike the last question asked this witness and make a single observation, that I am delighed that the two opposing counsel should have nullified the entire Packers and Stockyards Act by a single speech, and that is what they have done if their view is to be taken. Now that is all. That is all, Mr. Summers, except for your cross examination.

[fol. 462] Cross-examination:

Q. Was it true during the year 1932 that you found the markets generally bad in the sale of cattle at Chicago?

Mr. Miles: Objected to as absolutely incompetent as to what the condition of the market was.

The Examiner: Objection overruled.

(Whereupon the question was read.)

The Witness: Yes, last year the markets were exceptionally bad.

Mr. Boyd (continuing): It was a rare thing you found fast, snappy markets?

A. Very seldom.

Q. Generally speaking you would call it a buyer's or seller's market?

A. It was a buyer's market, practically all the year.

Q. Has it been your experience that it requires a greater length of time to sell the same kinds and numbers of ani-

mals as it required in the years past, since 1923,—you have been here six years you said, didn't you?

A. Yes, sir.

Q. In the six years you have been here, have you found it more difficult to perform your occupation as cattle salesman with the same number of animals as theretofore?

A. Well, I would say that with the same number of cattle it was harder last year, would take as long a time, may take a little longer time to sell cattle than it has in past years.

Q. That was due to the condition of the market generally?

A. Yes, sir.

Q. And due also to the size of shipments, size of parcels, [fol. 463] increasing number of drafts?

A. Well, on a slow market like we had last——

Q. Just a minute, I don't think you understand what I am getting at. Have you found that the number of animals per owner has been decreasing in recent years?

A. Yes, I would say they have been decreasing.

Q. And is it true that the number of owners increase per animal, for the animals that you sell, that the work is correspondingly increased?

A. The work is correspondingly increased.

Q. Requiring more work, more time per animal than heretofore?

A. Yes, sir.

Q. In other words, the shipments are getting smaller, the parcels are getting smaller?

A. Yes, and there are a lot of truck consignments now where they didn't used to be before, too.

Q. In case of rail shipments, the number of animals per owner has grown smaller and the number of drafts per carload has increased?

A. Yes, they have.

[fol. 464] Mr. W. C. Patterson, a witness called by the Government, testified as follows:

Direct examination:

I live in Glenwood, South of Chicago a little way. Am a cattle salesman in the Chicago Stockyards and am the sole

owner of the firm of John Patterson and Son. I have one employee that I call an extra man; that employee yards his livestock each day; a Mr. Strader sells my hogs and Dan Ryan, a tripper, does extra work for me.

I first came to the Chicago Stockyards along in 1884 and remained in the yards until 1889; was with my father John Patterson. Left in 1889 and went to Iowa and was there until 1904. When on the death of my brother, I came back to Chicago, replacing my brother but my father died in 1916 and I remained in the business and continued the firm. I commenced selling cattle at the Stockyards as a salesman in 1904. I had had some little experience before leaving for Iowa for a couple of years.

I would be classed as one of the smaller operators. In my early days the Patterson firm had been one of the largest operators on the yards. My business has declined during the past two or three years and quite a good many of my customers are out of business. Quite a few of the old timers are dead. I sell all the cattle that are consigned to me.

[fol. 465] Cattle yarded in my alley are sorted, if necessary, watered, fed and gotten ready to show, and when the market opens, sometimes not until ten, sometimes eleven, I start to sell the cattle. During the past two years it has been necessary to sort at least forty per cent of the cattle. I am getting more butcher stuff in the last two years, which requires more sorting, more drafts to weigh, and more time to sell. The market starts later than previously but I do not know the reason. Order buyers and what are called outside buyers as a rule actually begin to buy before the packer buyers get into competition and the market does not seem to go with the snap when the packer buyers begin trading, owing to conditions and how they figure the market will be. There are days when they ride around and with a pretty good run of cattle they will say they just want to pick a few desirables, and will state that they will see you later, and it may be pretty nearly noon before they try to buy the other class of cattle, but you have to be working on them. Actual trading on the market commences about nine o'clock, occasionally at eight or eight thirty.

We take into consideration the market the day before, the run, how the market finished up the day before, and naturally we will watch the actions of the large buyers,

whether they act like they are ready to buy cattle, or want [fol. 466] cattle, or whether they will lay back, and if we figure the market is liable to be lower, or we figure it is liable to be higher, that is the way I figure it, we watch the actions of the buyers as to whether they are coming out to try to buy or whether—of course, the commission man has always got his prices up if he can, you know, the way I always figure.

Occasionally I did country solicitation, but I have not been out for some time. I do no advertising, write letters to prospective customers and to my own trade. My solicitation has been limited during the past year. That solicitation or the lack of it has had an effect upon my business. I think that by neglecting to make trips to the country that my business has shrunk on that account because you come in contact with people or acquaintances which you hadn't seen for some time and you can very often get new shipments by meeting them again.

I clear my business through the Sinclair Commission Company. They handle all the finances and they collect for the cattle and remit for the sales. The Sinclair Company is bonded and guarantees the remittances to my shippers. I do not give a personal bond. The witness stated that the bookkeeping is done by Strader Bros. that they do all of the office work except making out account sales which is done by Mr. Strader.

[fol. 467] Their largest day's business during 1933 was seven carloads; four loads of cattle were sold by Patterson and three loads of hogs were sold by Strader.

There was not much change between the business of 1934 and 1933. Mr. Sinclair gets 25% of all commissions from the Patterson firm and Mr. Strader gets one-half of the commission after deducting the 25% for Mr. Sinclair for clearing.

Frank Marsh sells my sheep when I have any at a charge of 10¢ per head but did not do any of the office work or collecting, simply weighs and sells the sheep. I sell a few seconds.

I do not use any subterfuges in disposing of seconds on the Chicago market.

I cannot approximate the difference in the expense in handling fresh cattle and seconds.

The four loads of cattle which I sold about in February

I believe went over the scales about twelve o'clock. If I had eight loads of the same kind and quality to sell, I could not say whether or not I could sell them because oftimes you can sell four loads and have an additional four loads of the same kind, and you might not get them sold the same day because one buyer had suited his order and the other [fol. 468] fellows would not bid you on the other four for as much as you got for the ones you considered the same cattle, but that is the way the market runs. There is a market for everything that comes to the Chicago yards for some kind of a price during the day. If I had eight loads I could have gotten some price for them if I had been willing to take it, maybe.

As a trading transaction, sellers usually ask more than they think the livestock is worth; that on a hot market there is little trouble in agreeing on the price; other times you will have quite a hard time to get a price, what you consider the market. That it is quite frequently necessary to carry livestock over because the bids are so low that you do not care to sell at the price.

I am a small operator and I do not believe I carried livestock over one day to the next more than two or three times during 1933 and perhaps not more than a dozen times during 1932.

I could have sold more cattle in 1932 than I did with the same organization if I had had the receipts. I probably could have sold two or three times as many cattle if I had received them to sell on commission. The four loads which [fol. 469] were sold on one day in February were straight loads belonging to one owner. I could have sold two more. My firm had sold as high as 25 loads of cattle probably twenty years ago.

Cross-examination:

What my firm sold twenty years ago is not a criterion as to what ought to be sold under market conditions now prevailing.

I have now been shown the account of sales covering the purported four loads sold by me on one day in February, and on examination of the account sales I find it to be a three car shipment. The three cars consisted of 46 head of cattle, weighing 66,740 pounds, that they were all sold to the New York butchers for shipment from Chicago, were

sold at five cents a pound and weighed in two drafts, the additional draft being necessary on account of the weight exceeding the capacity of the scales.

It was the lack of effort on my part in my solicitation that had something to do with the decline in my business in recent years.

Although I am 68 years of age, I am able to perform my duties as a salesman as well as younger men and I had no complaints with reference to the character of service which [fol. 470] I render to my shippers. The service which I render, from the shipper's standpoint, is as good as when I had a larger volume. The service rendered by me to my shippers is not effected by the volume of my business.

Cross-examination:

The amount that I could sell in a day would be guesswork. The law of supply and demand, the price at which the cattle are being offered, all are elements in the time taken to sell cattle. On different days different packers are looking for different types of cattle. On one day you might sell a certain type of cattle to one packer buyer and then on the next day he would not buy the same type of load at any price.

"Q. In your opinion, Mr. Patterson, isn't the distribution of receipts among a great number of commission men a price getting factor by reason of the fact that the buyers have to do more shopping than if the greater part of the day's receipts were assembled in a lesser number of commission men's pens? In other words, does not the fact that the great spread of livestock on the Chicago market make a factor in price getting?

A. I don't quite get you on that.

Q. Well, if all of the day's receipts were in the hands of two or three commission men, there would not be as much shopping necessary by the buyers?

A. No.

Q. And consequently there would not be the price get- [fol. 471] ting factor involved that is involved in great distribution of receipts?

A. Yes, sir.

Q. And that is also true in connection with the great number of buyers on the yards, if you eliminated the buyers on the yards or any part of them to any great extent, that would in turn stifle competition, would it?

A. Yes, sir.

Q. And reflect itself in the prices?

A. Yes, sir."

Redirect examination:

"Q. Mr. Patterson, do you believe that if you doubled the number of commission men on the yards, that that would send up the prices, or buyers would pay higher prices?

Mr. Boyd: I think that question is incompetent, irrelevant and immaterial.

The Examiner: If I understand the witness' testimony, they asked him in substance whether or not having all these numerous sellers on the market did not increase the price, is what I understood was the effect of it, and, if so, the objection is overruled. Read the question.

Mr. Boyd: Do I understand if not, it would be sustained?

The Examiner: Well, I will pass on that when I come to it.

The Witness: Well, all I know, I think that competition is the life of trade.

Mr. Miles: Can you answer the question, Mr. Patterson? Do you think if there were double the number of commission men on the yards, that the price to the farmer would [fol. 472] be higher, that the farmer would get more for his livestock?

The Witness: No.

Q. If there were ten more commission men on the yards, do you believe the farmer would get more for his livestock?

A. No."

All other conditions being equal, I believe I could sell as much livestock as I could ten years ago. I considered myself as good a salesman as other salesmen on the yards. If on the following Monday morning I were to receive ten loads of cattle, I would go out and sell them and not take on any extra help.

Recross examination:

"Q. Mr. Patterson, I think your answer needs some clarification and for that reason I will give you a ten car consignment and ask you if you would be willing to guarantee you could sell them on the Chicago market, under conditions I will relate. We will assume that the market is slow and draggy and that condition has prevailed at this market in innumerable instances during the past year and a half.

A. Yes, sir.

Q. That it is one of the tough types of markets on all classes; that you will receive by carlot a cooperative shipment, the first load to contain bulls, fat steers that would be good to choice, and some prime, that it would contain calves, partly veal and partly stockers, that it would contain cows, a part of which would be canners, part of which [fol. 473] would be cutters, part of which would be springers, and some fat cows, that you would have a couple of fat heifers and a couple of thin heifers, the load would contain also a bob calf and two cripples; that the next load would contain a shipment that would be forwarded from Kansas City, had been shown at Fort Worth, had been shown at Oklahoma City, had been shown at Kansas City, and finally reached you for sale; that load contained 25 cattle that had been fed at Parsons, Texas, and were meal fed, that you had a load that came from Southwestern Texas and contained some dogies, some long horn swamp angels, and that the balance of the ten cars were as much mixed as the cattle that I am talking to you about, do you think you could actually get them sold at the market?

A. That is an awful extreme. I probably could not get rid of all that stuff. It is so mixed up, one man could not handle ten loads of that kind of stuff in a day.

Q. Don't you think that is as reasonable a question to be propounded and ask you to take into consideration those conditions which do prevail at Chicago to your knowledge, as to ask you a general question; if you could sell ten cars of cattle and say you take into consideration anything you know about covering a period of 48 years?

A. No, in that class of stuff, a man could not sell all of that in one day, one man in one day.

Q. Had you considered in making the answer to the ques-

tion that those cattle might contain, by reason of the hypothetical question he put to you, allowing you to take in any conditions that might prevail on this market, just any time of the year, any time during the trading hours any market condition migh prevail, you can conceive and will concede that it would not be possible under markets as they exist today for a salesman to attempt on any day in the future without knowing anything about what the circumstances might be, that to ask a man if he can sell ten cars, would be asking him to project himself into the future and [fol. 474] become a sort of a prophet and would necessarily involve pure guess work on the part of a witness?

A. Yes, sir, one man could not sell ten cars of cattle of that mixed stuff in one day."

Redirect examination:

I have never sold Texas cattle.

Recross-examination:

"Q. Mr. Patterson, regarding the ten loads that you say you had in mind, it is a fact, isn't it, that you could not sell those ten loads of cattle if there was not a demand on a specific day by the buyers for that type of cattle?

A. Well, it is possible, we could have a market; we have had markets or days where there would be almost half or more of the cattle would not be sold because they were not buying anyway, yet, as one market day with another, I am referring to.

"Q. The Government has asked you to make an estimate, or rather you have indicated you thought you could sell ten carloads of cattle, and the question and the answer are in the record. Now in previous cases of this sort, those questions have been asked and varied answers have been made to that type of question. The purpose of procuring an answer is to determine, I believe, the amount of business that might be reasonably expected of the salesmen engaged in the sale of cattle that might be used in fixing a rate for the sale of livestock on this market. After having made that statement, I will ask you to state whether or not you feel that it would be a fair requirement of the Government to expect or to require a salesman engaged in business day in and day out on the Chicago market and the large num- [fol. 475] ber that are so engaged, in order to be efficient salesmen, to approximate the sale of ten cars of cattle in

a day, taking into consideration as well that ten cars per each salesman would be very greatly in excess of the number that ever come to this market?

Mr. Miles: To which the Government objects on many grounds. One of them is the implied assumption that the witness would change or color his testimony to meet the particular situation if he did or did not know. The next is this: the question assumes that there is a requirement made in these orders or by the Government that a salesman sell a particular number in order to be regarded as efficient. I submit that the record is the best evidence, whether there is or is not such a requirement. I submit that no such requirement has ever been made or suggested. Further, counsel has testified, or embraced or included in his question the fact that at other hearings certain testimony has been adduced, and there is no record before this hearing at the present time or any other hearing, and to a question somewhat similar or to a statement made along the same lines by Government counsel, there was very strong objections made. This question, I submit, is improper from so many angles that it is useless to discuss them and, therefore, I object to the question being answered.

Mr. Boyd: And, before the witness answers the question, I want to ask one or two others in connection with the question itself. Do you want to rule on it?

The Examiner: Yes. Objection overruled.

Mr. Boyd: Have you ever before had an explanation made of the methods used by the Government in arriving at what a salesman may be able to do in the performance of his duties and the number of animals or carloads that he may be able to sell in a day?

The Witness: No.

Mr. Boyd (Continuing): So that this whole proceeding and the basis of it was unfamiliar to you at the time you came in here this morning?

A. Yes, sir.

[fol. 476] "Q. And until I made the statement you had no knowledge or idea of the purpose to which the answer might have been made, might have been used?

A. No, sir.

Mr. Boyd: Now, I will ask the reporter to read the question and allow him to answer.

Mr. Miles: Mr. Examiner, I might inject this thought;

that if the witness had no information about, I use the term advisedly, before counselor began his statement, he certainly has no information at the present time and I renew my objection.

The Examiner: Objection overruled. Read the question.

Mr. Miles: That is the very question which the Secretary is to determine, and it is not a proper question, therefore, for the witness.

The Examiner: Objection overruled.

Mr. Boyd: Do you understand the question?

The Witness: Not clearly.

Mr. Boyd: Would it help you to hear it again?

The Witness: I might get it.

The Examiner: All right, read it to him."

(Whereupon the question was read.)

"The Witness: No.

Mr. Boyd: That is all."

Redirect examination:

"Q. Was your answer due to the fact that there were not enough cattle to go around to all the commission firms as they are now organized and the number existing?

A. That there are not enough cattle?

[fol. 477] "Q. Yes.

A. Well, not necessarily, no.

Q. If there were half the commission firms here, you believe you could sell ten a day, don't you?

A. Yes, I might not be able to sell ten if the market condition was, it would be owing to market conditions whether you could or could not, day in and day out. There might be days you could do it easily. I could sell ten a day on some days and on other days you could not.

Q. And some days you might sell 20 loads, would you not?

A. Well, I would not say."

Gene McAdams, a witness, called by the Government, was recalled to the stand, and testified as follows:

Direct examination:

I have previously appeared and testified at this hearing. John Clay & Company has four cattle salesmen, two of

them being steer salesmen and two butcher stuff salesmen. We have a fifth salesman by the name of Johnson who performs services as directed by me as the head salesman. Johnson did some yard work and might buy a load of cattle but in selling and buying he performs as any other buyer or salesman.

If a purchase is made, the purchaser pays a commission for the service rendered.

[fol. 478] If a trader turns livestock over to John Clay & Co. for sale, some of the livestock is sorted, some is not sorted. It would be impossible to approximate how much is sorted or unsorted.

If traders do not tell them to sell seconds the way they are sorted when received, it is optional with the salesman as to what sorts he will make. We can sort them if we like or leave them the way they are if we like. If the trader turns them over to the commission company for sale and says, "Get all the money you can out of them", we would sort them, but, generally, as I said before, they have so few head that they have them sorted, one little lot of cattle, and we go and sell the few head just as they are. If I could get more money out of seconds for the owner, I would re-sort the cattle.

Live stock that is sold by John Clay & Co. on account of traders who are reselling livestock previously purchased on the market, such livestock is delivered into the pens or alleys of John Clay & Co. by the owners of the livestock who are traders.

After they are delivered, they are sold according to the wishes of the owner, or else according to the commission company's judgment.

In discussing whether or not trader cattle, which are [fol. 479] called seconds, are more difficult to sell than fresh cattle that belong to shippers, it would be purely a business transaction in selling either seconds or fresh cattle. It would be up to the buyer as to how he would take either load of cattle. There may be two neighbors having loads of cattle that were pretty nearly identical and they may buy one neighbor's and not the other's. It may be the same with the speculator load and the shipper. It might happen either way, one time in favor of the trader, one time in favor of the farmer. It would be hard to answer which would be the easier to sell or the harder to sell. It

depends entirely upon the buyer, how he buys them, but all livestock is sold to the very best possible advantage.

Some buyers might be a little prejudiced because livestock belonged to a trader which is being resold. My experience indicates that there might be times when the buyers have demonstrated that they might be prejudiced against trader cattle.

I would not say that it took more time to sell seconds than fresh cattle.

I do not know the proportion of butcher stuff and steers that John Clay & Co. sell. I do not know the number of [fol. 480] head which I sold as a steer salesman or the proportion sold by the other steer salesmen, but they both work together on the cattle and they may complete a trade together. I have no distinct impression as to whether I sell more or the other salesman sells more.

Mr. White is the other steer salesman.

All buyers use their own business methods in making purchases. Some buyers make bids as fast as they examine cattle and others do not.

Mr. McAdams was temporarily excused.

F. R. MARSHALL, a witness, called by the Government, testified as follows:

Direct examination:

I reside in Salt Lake City, Utah, and am Secretary of the National Wool Growers' Association. Have held the position since April 1, 1920. Prior to that time was in the U. S. Department of Agriculture in charge of sheep and wool investigations for seven years, and prior to that time was in Agricultural College and experimental work for twelve years, mostly in connection with Animal Husbandry work. The National Wool Growers Association is a voluntary unincorporated organization. It has both association [fol. 481] and individual memberships, but nearly altogether association memberships. It is in effect an affiliation of state associations of the 12 principal Western states known as the range states.

They have some individual memberships but not many. I am part owner of a sheep outfit located in the State of

Washington, which ships from twenty to twenty-four cars per year to the St. Paul and Chicago markets, and I have been interested in the sheep production business since 1922 or 1923. I have attempted to make a considerable study of the sheep markets and of the records and material regarding them; have been frequently in the Chicago yards with our own company's sheep as they are being marketed. I usually make it a point to talk to some of the sheep men in the sheep barns or the office regarding market affairs in general when at Chicago. Our association is interested in all questions involving expenses in marketing sheep, and I have appeared in other hearings before the Secretary in connection with rate proceedings involving commission rates; and have testified at such hearings. I do not remember whether Chicago charges were mentioned at the previous convention of the National Wool Growers' but I have [fol. 482] a distinct recollection that the association should do everything possible to get marketing and other expenses reduced to the lowest feasible point.

I ask indulgence of the Secretary and of his counsel and that of the commission men for my failure to have prepared testimony for this proceeding as the importance of the questions would warrant. The position of the Western Lamb raisers who ship to these terminal markets, speaking generally for them, and particularly as I understand the feeling to be among members of our Association, is that it is vitally necessary that every individual item of expense connected with the production and selling of lambs and wool should be reduced to the lowest possible point that is consistent with efficient and good service. We have had controversies with various branches of the Government over this matter, and, as a single point, aside from this question but illustrative of our pursuit of the policy, we have just last week concluded a series of conferences with the United States Forest Service regarding the grazing charges to which I referred a few moments ago. It might not be inappropriate or improper in a proceeding like this to state that at one time the Secretary of Agriculture retorted to our statements on that line that these charges were immaterial, were minor, did not amount to very much [fol. 483] in our business, but the reply we made to him at that time we make to every other interest, namely, that as good business men, to say nothing of the degree of our

solvency or insolvency, we consider it imperative to have every individual item of expense, whether a large item or a small item, adjusted to the lowest possible point that can be properly paid to those rendering the service. Since 1930 this question has been of special interest and concern to the Western sheep raisers, because, partly of the fact that with very greatly diminished proceeds from their sales of lambs particularly, and also of wool incidentally, it has been impossible to meet their payments, their expenses, interest and payments on their indebtedness, and that has brought out into more than usually strong relief the importance of reducing all items of expense. So far as the range and home expenses are concerned, I think no one will question that the men engaged in this industry have gone fully to the limit. In fact, they have been charged with having been unfair in the reduction of the wages they have made to their labor, and in their purchases of supplies, pasturage and so on in their communities, but they have had no choice in the matter. We realize and appreciate the impract-ability of raising and lowering commission rates according to the value of the livestock, but we find that we are operating under a scale of rates [fol. 484] such as applies to the selling of livestock at our public markets, operating under a scale of rates through a rather long continued period of what we then believed were remunerative prices, and a little better than that at times, then, when we come into a period such as we have been going through since 1929, and particularly since 1930, with market prices reduced by 50 per cent, speaking fairly but broadly, then we think we are within our rights in questioning the propriety of such rates. We recognize the character of the service rendered by the commission men. I presume that it would be superfluous for me to dilate upon that. It strikes us as being something very largely in the nature of personal service. The relationship is quite intimate. There are many long and strong negotiations and I might also say friendships of long and strong standing between these salesmen at the terminal market and their patrons from the Western country to which I am referring. The work of the salesmen in handling this stuff, after it arrives in their hands at the various markets, includes a large responsibility. I am inclined, in my view of the matter, and, as I understand the views of our members,

to especially stress the services of the commission men in their attention to the proper preparation of the sheep for sale, in the sorting, as it may be done or may be required, either before or after the sale, and in the matter of making the collections, getting out prompt returns, [fol. 485] which prompt returns, I am glad to say, are the regular rule. It is, in fact I do not recall in recent years of having heard any complaint of any consequence on that score. We feel, too, that these men have a larger duty to their patrons and their clients in making and getting of the prices for the sheep and lambs which they sell. We are also appreciative of the difficulties under which these men labor in attempting to get the highest possible price for the offerings of their shippers. We feel that rates for these services, as they have been prescribed or determined under the Packers and Stock Yards Act at other markets. and as we understand, they are to be determined for the future at this market, should apply as maximum rates. Being located at various parts of the country, none of us being regularly on the market, of course, we do not assume to be in any position to exactly suggest the proper amount of the rate at any market. I have not seen the audit made by the Government representative from the books of these respondents in this proceeding. I have a few statements to make, however, regarding the procedure and the methods employed by the Secretary in arriving at a determination of a proper rate, judging that method by the language of decisions rendered in previous cases, assuming that the general line of procedure and the bases of determining the rates in this proceeding will be at least mainly like that [fol. 486] which has been followed in the past, I wish to comment on only two points that come to my memory in which I think there is room for argument, in fact, need for some plain statements from the side of the lamb shippers in criticism of the actions of the former Secretaries of Agriculture in arriving at what they have determined to be fair rates.

The first point of criticism on which I wish to speak, as based on former decisions in cases like this, is that of including in the rate, as I understand it, an allowance for expenses to the commission man in getting business and in maintaining the volume of his shipments which he receives to sell. I hope I will not be misunderstood or hope I will

not seem to make it appear that we register objections to the commission men doing anything they deem fit and proper or in their own interests to increase the volume of their business. We have no such objection. That is their concern. I think it would be fair and proper and so recognized by them to state that in this relationship between our men, ourselves as shippers, and these men as salesmen, that it is to all intents and purposes the relationship of employer and employee, and we must look at the amount we pay in the light of what we get for the service rendered. [fol. 487] Now, as I understand the reasoning of the later decisions of the Packers and Stockyards Administration or the Secretary of Agriculture, considerable consideration has been given to the amount of expenses incurred in obtaining business or the shipments to be sold at the prevailing rate. I believe that the audit has been quite complete on those points. I only know it as it has been reported and stated in the language of the final decisions rendered by the Secretary. In fact, Mr. Examiner, in those decisions I find my objections to the inclusion of these expenses of business getting more admirably expressed. In fact, some of the language seems very familiar, some of the terms and phrases.

Some of the terms and phrases. The arguments already meet with my approval. I recall something like this, in substance, that this matter of soliciting, traveling to the West to interview prospective and old shippers and other expense is a matter of getting business away from each other. I cannot cite any particular part of any particular decision at this minute, but my recollection is that it has been cited in those languages, that the expenditure of effort and of money by representatives of the commission houses in ob- [fol. 488] taining business does not vary either up or down the total amount of business.

The volume diverted from one house to another or possibly to some extent from one market to another cannot directly or indirectly be considered as enabling the commission men in general to give more efficient service or to give cheaper service. In fact, I don't think I need to rely, I can't rely, upon the Secretary's decisions for the best support in the world for my views along that line. The trouble I run up against is that when it comes up to the total of the items of expenditure prevailing among these

agencies on the market, we find an item of business getting, I don't know, I guess $1.50 a car.

I don't keep a diary but I have been in Chicago four or five times a year from a half day to a day and one-half. I don't visit every pen or salesman while at Chicago but try to look at what is going on and see their difficulties and see their side of the case, and I know they have difficulties. I know what is meant when they talk about good market days and bad market days. The latter is rather a mild term as the markets go, but as a shipper, I know something about the bad ones. I have seen some good market days but that is a little test upon my memory. I have seen commission [fol. 489] firms and salesmen from commission firms functioning on markets on both good days and bad days trying to sell sheep, and have observed their operations and the fact that they sell them on those days.

"Q. Mr. Marshall, from your experience and observation, what, in your opinion, would be a reasonable performance to expect of a good sheep salesman on the Chicago market, how many carloads in a year?

Mr. Boyd: I object to the question unless the witness can show he has observed the sale of livestock during the course of a year at Chicago or has observed the selling of livestock by livestock commission salesmen of sheep at Chicago, and the witness is qualified properly to answer that question.

Mr. Dagger: I submit, Mr. Examiner, this witness has demonstrated from his testimony that he is fully qualified to answer that question.

Mr. Boyd: I don't think there has been a proper foundation laid for asking it at all.

Mr. Dagger: The witness has stated he is very familiar with the Chicago market, has shipped sheep to the Chicago market, has spent lots of time on the Chicago market, he knows what the market conditions are, he knows good days and bad days on a market.

Mr. Boyd: He says he has been on the market five days a year.

Mr. O'Bryan: Five times, half a day to a day and a half.

Mr. Boyd: Half a day to a day and a half.

Mr. Dagger: Take the ruling on it.

[fol. 490] "The Examiner: Objection overruled.

Mr. Boyd: Note an exception.

The Witness: Well, the best, fairest answer I would care to make to that is that in my experience of being in the sheep pens at this market, particularly when my own company's stuff was being sold, I have known of our salesmen having as many as five cars of sheep from the Triangle Sheep Company, and from 4 to 6 cars each for, I was going to say, two or three, certainly two other clients that I particularly recall. I would say from my own observation that one concern has sold probably around 18 or 19 cars. Now, my recollection also tells me that in the case I have in mind, to speak of, to represent what I observed,——

Mr. Boyd: What date?

The Witness: First part of September, 1931.

Mr. Boyd: So I can procure the account sale and test it further, when did you say it was?

The Witness: Somewhere within the first days of September, 1931. I don't say those were 20 separate cars, requiring 20 separate sales.

Mr. Boyd: Could I find out what firm, please?

The Witness: John Clay & Co. and W. R. Smith, two of them. The number of sales I would not be able to state, probably in the first instance, seven, each of those strings are separate consignments to the packer, then, after the packer sorts out the fats, the feeders remain to be sold, well, there was a funny case at that time, now you speak of it, the packer went through and sorted them, got off the chute and weighed what he took for fats and the rest were [fol. 491] in the pens and the salesmen had to go around and sell part of that sort to the same packer, make another sort and sell the third cut to a feeder.

Mr. Dagger (continuing): Was that all done by one salesman?

A. Well, the actual selling, my recollection was, well, that salesman, I think, the one particular salesman had an assistant, I don't know. I never hang around close when there is a deal going on. I think it is good business to be out of hearing.

Mr. Boyd: Did I understand you to say W. R. Smith and John Clay & Co. and handled by one salesman?

The Witness: Two different firms handled numbers of sheep such as I have spoken of.

Mr. Boyd: On the same day?

The Witness: Yes, sir.

Mr. Boyd: And the same number of consignments by each firm?

The Witness: By each firm. I said I knew they handled up to three consignments amounting to 15 or 16 cars that I recollect of.

Mr. Boyd: One firm, are you speaking of now?

The Witness: Both of them.

Mr. Boyd: What?

The Witness: Both of them.

Mr. Boyd: How many salesmen were there?

The Witness: That is what I was going to answer.

Mr. Boyd: You said there was one salesman, I thought.

The Witness: If you would let me finish my answer to Mr. Dagger, I think you will understand.

[fol. 492] "Mr. Boyd: That may be.

The Witness: I would have finished my answer if you had not interrupted me.

Mr. Boyd: I will interrupt whenever I think it is proper to.

The Witness: I know you well enough to know you will. I said, Mr. Boyd, that there is a head salesman, I was saying, just as I was interrupted, that I do not make it a point, in fact, I make it a point not to try to tag a salesman around when the buyers are in the alley,—whether or not his assistant took any part in making that sale to the packer buyer or of selling the seconds to the packer or the thirds to the feeder, I do not know. I know he was in the alley with the head salesman, giving some help to the yarding and showing of the stuff, but just what part he actually had in the sale, I cannot say.

Mr. Dagger (continuing): Did he dispose of all of them that day, do you know?

A. Yes, sir.

Q. Were those single decks or double decks, do you know?

A. Double decks.

Q. My original question, Mr. Marshall, was whether you could give us your opinion as to what would be a reasonable performance for sheep salesman on an annual basis.

A. I would not undertake to say annually, I could only say daily, Mr. Dagger.

Q. You appreciate the fact that there is a variation in days, of course?

A. Yes, and the daily maximum performance would be determined by the number of consignments in the number of cars. Of course, with all single cars, it would be much more difficult than to sell three or four consignments of five or six cars, all depending upon the character of the market and the amount of sorting, because after the selling, [fol. 493] there is considerable sorting and weighing; in fact, by some representative of the houses which, while not strictly an immediate selling operation, is a part of the duties of the commission men.

Q. In your opinion, was the day to which you refer an unusual day in any way?

A. It was a heavy part of the season, I don't remember the run at that time, but ordinarily there is a pretty heavy run of Western sheep in the yards in early September in any year.

Q. Do you recall the condition of the market that day, whether active or draggy?

A. It was about $2.00 less than what I expected to get.

Q. Does that indicate it was a slow market or a fast market?

A. Slow.

Cross-examination:

I do not know what the actual expense is to the commission firms handling sheep on the Chicago market which is set up by the Government in their unit under the item of business-getting and maintaining.

Cross-examination:

"Q. Do you know, Mr. Marshall, what the actual expense is to the commission firms handling sheep on the Chicago market which is set up by the Government in their audit under the item of business-getting and maintaining?

A. I do not know. I testified that I had not seen this audit at all here, nor heard anything about it.

[fol. 494] "Q. And you do not know what money was actually expended for that purpose?

A. No, sir.

Q. By any of the respondents in this case?

A. No, sir.

Q. Your view is that no allowance should be made in the rate?

A. That should be compelled to be paid by the shipper for that purpose.

Q. You mean that no allowance should be made in the rate for that purpose?

A. Yes, sir.

Q. And you feel that represents the view point of your individual members?

A. I do, yes, sir."

JOSEPH BOURKE, a witness called by the Government testified as follows:

I reside in Chicago, Illinois, and my occupation is office work for Rice Bros. a respondent in this case, doing business at the Union Stock Yards, buying and selling livestock on a commission basis. Rice Bros. also handle clearing operations for other commission men. Speaking of clearing operations for other commission men, Rice Bros. will yard the cattle, take them to their pens, and furnish them with office help for their billing and running of their books and all that, but the practice varies with the different firms cleared.

[fol. 495] Rice Bros. Clear Cochran, Henneberry & Wallace; Abe Burnett & Co; H. L. Dunning and Company; and W. W. Wilson & Company; the latter is purely a financial arrangement; they do none of the yard work or selling for the latter company.

Rice Bros.'s bond covers W. W. Wilson & Co. In the case of Burnett & Co. Rich Bros. yardmen handle all the live stock that come into the yards. Rice Bros. has three yard men. Rice Bros. sells Burnett's hogs and if Mr. Burnett is away, also sells the cattle. The salesmen who sell Rice Bros. hogs also sells the hogs for Burnett. Also does all of Burnett's billing and office work; handles the remittances and the whole transaction clear through, making up report for his monthly report, make checks for freight and yards; makes his report for the Government's annual report, and everything pertaining to the office the same as is done in

the case of Rice Bros. Rice Bros. handle themselves all the calves that Burnett receive, the same with sheep.

During the last two months Mr. Burnett has been home sick in bed and during that period Rice Bros. would handle and sell 100% of the business consigned to Burnett. In the [fol. 496] case of market letters, Burnett has his own stationary, Rice Bros. furnishes the postage, Rice. Bros. stenographers cut the stenciles for market and circular letters; Rice Bros. furnish stenographic help for Burnett and some times gets up his market letters; some time Burnett gets up his own market letters.

Rice Bros. has filed a schedule covering the charges made to Burnett & Co. for the services rendered to the latter company. In the case of Cochran Henneberry and Wallace, Rice Bros. furnish two yard men that are used exclusively on their business and Rice Bros. handles all of their office business; one man is used exclusively on their billing and detail work and figuring on of their tickets and running their collections and deposits. Rice Bros. also supply them with a stenographer. Rice Bros. does no selling for the Cochran firm, they do their own. Rice Bros. bond covers Cochran Henneberry and Wallace. With reference to H. L. Dunning & Co. we do not furnish any outside help for selling or yarding, or any office help outside of one man that looks after their ledger and their remittances; they do just the office work for H. L. Dunning & Co. The Rice Bros. bond covers H. L. Dunning & Company. I am the assistant [fol. 497] to the manager of Rice Bros. I arrive at the office about 7:30 in the morning, make up the list of the days receipts, meet any shippers that happen to be in, getting their branding instructions, and if there are any separate owners to get a list of separate owners, the marks of the different species of the stuff they have. If the shippers are not at the office, there is usually a letter forward giving the information as to the foregoing details. When all the information available is at hand, the office generally gets in touch with the yards so they will handle cattle, calves, hogs and sheep for marks for the different owners and keep them separate. And from Tuesday on in the morning before nine o'clock, the office force generally recaps all the sales of the previous day, balances them out, and then balances collections with sales, sees that all the previous day's business has been properly handled and

then after that about nine o'clock, check up freight charges and yardage for the previous day. The yardage will be for two or three days previous and the freight for the previous day only. After that is checked up, any spare time is used to take care of previous week's reactor cattle where they have a postmortem and get it over by about eleven o'clock. I then go to lunch about eleven thirty, come back and the tickets from different alleys are in the office which are [fol. 498] figured and then billed to the different buyers for purposes of collection; and then we sort them, check the different accounts for the loads to see they check out and then start listing them out on account sales, making account sales for each sale had that day and then go up and get the freight charges to the freight office. If it happens that a short car is received, (a low minimum weight car) we have to take them back to get the freight refigured after the actual weight has been determined in order to complete the bills. If the shipper has not written a letter or come with the shipment, we have to refer to the previous shipments for banking instructions. We continue handling in this way until we are all billed on trucks and carloads; then we write our banking remittances if we can before five thirty so that they can get in to the mail and on the way to the country. We then line up all these banking remittances to get them out to the country and then write the checks for the different sales that are getting checks direct and list those in the cash book. Then we make up the mail and sort the checks up with the different account sales and letters that have been written and mail them out. A short car meant a car loaded at less than the minimum under special rule of the railroad and intended to meet truck competition. Con- [fol. 499] siderable time is used in refigering the freight on so called short cars.

John McNalley is the office manager. Charles Kelly handles the collections and Mr. Flickner handles all the truck buys, live stock arriving by truck, and starts billing on trucks until Mr. Kelly or I have caught up with our work and give them a hand on it, and then I also handle any claims that might be entered and the correspondence to the country. We have a stenographer by the name of Miss Thompson. I do all the billing on the carload stuff and on the cooperative shipments and if Mr. McNally is away, I take his place on the books also. Mr. Flickner makes out

the truck account sales and I make out the carloads. I also shrink all the calves and handle all the cooperatives. It would take from five to seven minutes to write out an account sales for a large car, and probably fifteen minutes more for an l.c.l. car. The company does not have an advertising policy with reference to geographical locations. They correspond with people all over, that they did some advertising in market papers, but I do not know just what papers; that in relation to the Montana business, a man is sent out there during the summer months during their feeding months to make contacts, spends several days out there [fol. 500] traveling through the state, and when he comes back, he compiles a list of the people he has seen and what they have on hand, and they get up what they call a special range cattle letter that they keep these men advised with right along as to how range cattle are starting to sell. This man might stop in Wyoming, either going or returning from Montana, but I do not know the arrangements with reference to solicitation by Rice Bros. The company sends the Drovers Journal which is really a market paper published in Chicago to potential shippers, and the newspaper has to be checked to prevent duplication of names. Rice Bros. has reduced salaries during the past year and during the past two years. My own salary had been reduced twenty per cent, becoming effective in August, 1933.

"Q. It appears, and if I am mistaken in any of this I wish you would correct me then and there, it appears that 70 calves in a single deck will take a commission charge of $22 and 80 calves will also take the same charge. Now, first, is that correct?

A. No, I don't know why there is any difference, why it should be any more coming by rail than by truck if they are both handled exactly the same."

Redirect examination:

"Mr. Miles: Can you tell us about how many account [fol. 501] sales in your judgment you can make out in a day?

Mr. Boyd: I object to that.

Mr. Miles (continuing): Taking the days now as you find them, day in and day out, through the calendar year of 1933.

Mr. Boyd: Now, Mr. Examiner, it is going to require, we find that we are now engaged in inquiring as to how many account sales this witness can make out without giving him specific data as to what may be accounted for on the account of sales. The business arriving at Rice Bros. is undoubtedly the same as with other firms. It is mixed in character. The office work in connection with one shipment may be with fewer animals, may be greater. The witness has testified that he is busy all day long, so busy to do the things that he has to do that he cannot perform some of the other duties that are necessary. To ask this witness to estimate the number of account sales he can make up is just as improper a question as to ask your dentist how many teeth he could fill, or the lawyer how many cases he can try, or any other thing where the conditions covering each transaction vary so greatly as they do in this business.

Mr. Miles: The witness meets the conditions as they are, day in and day out. Maybe one day he can make working at his utmost speed, a lesser number than on some other day he may consider all those factors, and I would be very glad if the witness could tell us about how many account sales, taking conditions as he finds them, he believes he can make out in a day.

The Examiner: Objection overruled.

The Witness: I could not very well give you any number at all until after I would line them and see what they consist of.

[fol. 502] "Mr. Miles (continuing): Do you think you would make out 50 a day?

Same objection overruled.

The Witness: I could not say.

Mr. John Swanson, a witness called by the Government, testified as follows:

Direct examination:

I reside in Chicago, Illinois, and am sheep salesman for John Clay & Co. at the Union Stock Yards, Chicago, and have done actually selling of sheep fourteen years, selling sheep and lambs. Work for John Clay & Co. My first

experience was as a yard man commencing in September, 1907, was a yard man for ten or twelve years; then started to sell odd lots for a year or two and finally was advanced to selling carload lots.

John Clay & Co. employs one additional sheep salesman. The second salesman or assistant salesman sells carloads, odd lots the same as does the witness. The assistant salesman's name is Harry Bourne. It would take from ten to twelve years for a man of average ability, intelligence and industry to make an average sheep salesman. He would have to grade and sort sheep and lambs and learn to sell odd lots for quite some time before he would be fairly well qualified to sell. He should sell odd lots for two or three [fol. 503] years before he becomes sufficiently qualified to sell carload lots. John Clay & Co. employ two yard men in the sheep division who work under my supervision and Mr. Bourne. They yard, help weigh and grade the different lots after the sale is made.

I have known Mr. Bourne for fifteen or sixteen years and before coming to work for John Clay & Co. I was employed by Wilson & Co. Packers, in the sheep house; Mr. Bourne was the sorter and grader for Wilson & Co. the Packer. I believe that Mr. Bourne has been with John Clay & Co. about twelve years. He was a sorter and grader for John Clay for a number of years, and during the past four years has been helping to sell.

I come down at 6:00 or 6:15 in the morning and take my assistant along with me and look at the different lots that we have in the pens at the time. At that hour some of them have been yarded into the selling pens, and some are still in the unloading chutes.

We then go through them and decide which is the best way to sort and grade them up for appearance to a packer [fol. 504] buyer or a feeder buyer, whichever it happens to be, and try to get the live stock shaped up so that it is presentable to the buyer's eye. Then, generally we leave the pen about 7 o'clock. After going through and looking the different loads over, we go to the office at 7 and stay there until probably eight o'clock or eight thirty, sending wires and looking over correspondence that has come in the early morning mail. This correspondence has to do with the stock that is received for sale, and we also inquire as to the market on different shipments that are coming in.

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We receive mail from our other houses, giving us their views as to the markets on the previous days, and we also have inquiries on certain classes of lambs that we are going to have on different days.

[fol. 505] We send telegrams to our different houses giving our views and ideas of the prospects of the market for that day. The market is supposed to open at 8 o'clock, but you can never tell just when it is going to open.

We take a packer buyer or any buyer for that matter into the pen and price a bunch of lambs to them, or sheep, whichever it happens to be; the packer may bid or he may not bid at the time, and walk out. If we have five pens of sheep or lambs to sell, the packer buyer may look at all of them, he may want some of them, or he may bid on all five pens, or he may bid simply on what he wants. The packer buyer may bid on pen No. 1 and then pass up all the others, or he may not bid on pen No. 1 if he thinks your asking price is out of line. It is the custom for the salesman of sheep to price his product before the buyer names his bid. We base our asking price on the supply and demand; the condition of the market the previous day, and try to get a line on the condition of the markets at other points. I use my own judgment as to what I think a bunch of lambs are worth. We generally remember what the price of lambs brought the previous day, we know what the receipts are and will be at six o'clock in the morning and get the receipts at other yards anywhere from seven to eight o'clock. In sorting you may have a load of stuff that consists of lambs, yearlings, wethers, and old ewes, and then they would have to be sorted in tops, culls, seconds and skips. We have from sixteen to 18 different classes in some loads; [fol. 506] that is not the usual load during the native season, which is between the first of May until about the first of January. A "skip" is a light lamb weighing between thirty or forty pounds, and they are generally found in most all native shipments. We class lambs and sheep by their teeth. A lamb will show his lamb teeth and a yearling his yearling teeth. Anything over a yearling is an old sheep, and an animal a year old determines the difference between a lamp and a sheep.

I cannot approximate the number of sheep as compared with the number of lambs received at the yards. The number of sheep in my opinion would be fewer. I cannot

estimate the percentage and would not want to make an approximation. The buying of sheep on the Chicago yards begins when the packer buyers get ready to buy. The buying at this time is commencing at 2:30 to 3:00 in the afternoon.

During the morning there is actually no trading done, no actual buying or selling, but merely trading talk.

We sell some stuff during the morning at 8:30, 9:00 and 10:00, lots of it, and at eleven, but the bulk of the lambs are not sold until between two and two thirty. I have reference to trading as it was being conducted during the month of May, 1934. But during the two weeks previous they have been selling sheep and lambs earlier in the day.

On fat stock most sales occur between twelve o'clock noon and three P. M., and on culls feeders and mediums it would be anywhere up to five or five thirty P. M. I stay at the stock yards until I am through. We sometimes stay as [fol. 507] late as 7:00 P. M. five days a week. We had eight carloads on Monday besides trucks which my assistant and I sold, and wound up about 12:30. Today we had for sale seven carloads and ninety-six head of mixed stuff in one truck and six in another. I left the sales yards at 1:00 P. M. We had 100 and some odd head in different lots still unsold.

It all depends on the season whether native sheep or western lambs require more sorting. A lot of sorting is required in the summer and fall when the range lambs are running, and that there would be a little more sorting on the natives. From about the first of January to the first of June the western lambs will run in straighter lots, requiring less sorting. I think that John Clay & Co., carlot business was about even as far as straight lots or mixed lots, and that while truck shipments may have several different owners in them, you may get a truck shipment belonging to one owner; most of them have several different owners.

I generally try to solicit 63 days per year, but as a rule do not get to use that much time. I usually go out for this purpose from the market Saturday afternoons or Sundays and sometimes am unable to do that.

I go as far as the west coast on a long trip once a year; I also solicit in Iowa, Nebraska and Illinois, and I make my nearby trips over the weekend. Once in a while I may

take a full week; I travel by rail and I might cover several [fol. 508] counties in one week end. I get a list generally from banks in certain territories indicating live stock that is in that territory and then attempt to arrange my trips so as to call on as many prospective shippers as possible. By so doing, I may call upon a feeder of lambs who is about ready to ship and upon request of the owner will sort them and grade them for him, and by so doing would separate the fat animals from the others. I never attempt to tell a shipper what he will receive for his livestock, but will say that "in my judgment, if you ship them in next week, they will bring about this figure".

It is harder to sell single deck feeders than it is double decks of feeders; if the market is slow and draggy you could sell a single deck easier than you could a double deck. There would be hardly any difference in selling double or single if you got a fast market, but they are rare. It depends on the supply and demand as to whether stocker and feeder lambs are more difficult or less difficult to sell than fat lambs.

"Q. Yes. In your judgment, how many carlots of sheep do you believe you could have sold if you had all that you could sell? Now, I want you to assume conditions as you found them. You have your various days, the slow and draggy and fast market; consider all the conditions as you found them during the year 1932, and then assume that you had all that you could handle. Now, is that clear to you so far?

[fol. 509] A. No, it is not, Mr. Miles.

Q. We will start in all over again. Taking the year 1932 just as you found it, you had different kinds of days, did you not?

A. We did.

Q. Slow market and fast market, hot days and cold days, rain and snow, and again I want you to consider that things existed just as that way, I want you to consider ever-thing as being exactly the same as you met it during that year, only I want you to assume that you had all the sheep you could handle; how many carloads, in your judgment, could you have sold?

Mr. Boyd: Let me—I object to that question for the reason that the witness has not testified that he knows how

many he did sell or that he could have sold more than he sold; that the answer to the question presupposes a condition that the witness could have sold more than he did sell if he had had them to sell, that if he could have sold more than he did sell that it does not tend to prove that he was less efficient than he is as a salesman, or that his value as a salesman was any less; that the answer to the question will not prove any of the issues in this case; that to answer the question would be an approximation upon which the Secre- [fol. 510] tary could not arrive at would be a proper or would have been a proper service during 1932, or the further fact that I believe that the service rendered in 1932 by this witness was a full day according to his own testimony to dispose of business that he sold.

Mr. Miles: Mr. Examiner, I think I will move to strike the testimony of counsel.

Mr. Boyd. And I may say to the Examiner that the objection is not stated for the information of the witness. I have avoided, as far as I could, entering any objections to questions by Government counsel, but, in this situation, I think I would be permitted by the Examiner to indicate to this witness the use to which I believe that his answer might be put in view of the jeopardy that he may be placed in by a failure to properly consider the answer which he makes. The witness is about the stockyards; it may be used; the employees here probably, very probably are uninformed as to what the issues here are. I may say that even I myself am very much at sea as to the use to which some of the evidence may be put but in order to save the record I do not want to ask the privilege of explaining to this witness how I think his answer may affect him. If he does answer, I would simply want him to consider very carefully the answer that he may make and to be very precise in the [fol. 511] things that he may say upon this point and be certain that he is as accurate as it is possible for him to be.

The Examiner: Any further objection?

Mr. O'Bryan: Yes, I would like to object to the question on the ground that it puts upon the witness the burden of assuming all the factors surrounding what he may or may not do on a given day, and that is a question which the witness is neither qualified nor expected to assume. It is an improper question.

The Examiner: Anything further from either counsel?

Objection overruled.

(Whereupon the question was read.)

The Witness: It is hard to say.

Mr. Miles (continuing): Well, can you give us your own best judgment on it?

A. As to the number that John Clay and Company sold?

Q. No, that you could have sold?

A. That I could have sold.

Q. Yes.

A. I cannot.

Q. Did you answer?

A. I cannot.

Q. Do you believe that you could have sold 2,500 cars?

A. Myself?

Q. Yes, sir.

A. No.

[fol. 512] Q. Do you believe you could have sold 2,000 cars?

Mr. O'Bryan: I object to this form of examination. The witness has answered that he cannot answer the question. Now, this is an attempt to cross-examine Government's own witness.

Mr. Miles: Again I object to Mr. O'Bryan's objection which can have nothing to do with the order buyers.

The Examiner: Objection overruled.

Mr. Miles (continuing): Do you believe you could have sold——

Mr. Boyd: May I object to the question for the reason that the witness has said that he did not know how many he did sell and that he does not know how many he could sell? He has already answered the question, I think, Mr. Miles.

Mr. Miles: He may have answered one question, but I asked another one.

Mr. Boyd: All right.

(Whereupon the question was read.)

The Witness: I do not know.

Mr. Miles (continuing): Do you know the largest number of cars in one shipment made by one owner that you received in the year 1933?

A. No, I do not recall.

Q. Could you approximate it?

A. In any one day?

Q. Yes, sir.

[fol. 513] A. Four cars, to the best of my recollection.

Q. Did you sell them yourself?

A. With the assistance of Mr. Bourne.

Q. And did you have other cars the same day, do you recall?

A. Other shipments of livestock?

Q. Yes.

A. Yes.

Q. You do not remember how many?

A. No, I do not.

Q. Mr. Swanson, in your judgment, could you alone sell 1500 carloads of sheep in a year, taking all conditions as you found them?

A. I do not know whether I could or not, Mr. Miles.

Q. Do you believe you could sell a thousand?

A. It is hard to say.

Q. In your opinion, could you have sold any more sheep last year than you did sell, if the supply had been available, that is, if they were in your pens?

Mr. O'Bryan: I object to that form of question because it again forces the witness to assume many and various other factors, and I am not trying to coach the witness, but he is not called upon to assume and answer improper questions.

The Examiner: Objection overruled.

Mr. Boyd: Now, let me say that there were days in 1932 that the record will disclose when the sheep had to be [fol. 514] carried over, they could not be sold at all. That is the bulk of the shipments had to be carried over during the year 1932. The witness has testified he did not know how many cars he did sell or how many head he sold or anything else. You are assuming now, I take it, that you want him to answer the number that he could have sold if he had had them to sell in addition to those that he did sell. Is that the purpose of the question, if I understand the question?

Mr. Miles: Will the reporter read the question?

(Whereupon the question was read.)

The Witness: I do not know whether I could or not.

Mr. Miles: I think that is all for the present.

Cross-examination:

In order to determine whether sheep or lambs are fat, it is necessary to handle them, that is go over their backs and ribs with your hands to determine their condition of flesh. And it requires the handling of each animal separately in sorting and grading. I always have my assistant help and generally educating the yardmen to advise them and have them mark them. You either hand pick them out or you chalk mark them as the case may require; so that in selling 100 lambs I physically take hold of the animal and examine it for flesh, and that requires assistance to do this. [fol. 515] *He* He does not find that many owners are able to sort for flesh the lambs that they have fed and do it accurately. When rendering service to patrons or potential patrons in the country in sorting or grading that it is desired by the owners, we make requests to come to the country for that purpose by wire and by letter and we get more such requests than can be satisfied. In soliciting business, we have a two-fold purpose; one, to serve the shipper, and the other to serve his company. I visit feed yards adjacent to the Chicago market for the purpose of grading and examining sheep consigned to John Clay; and sort out those that are on feed which are fat and leave the balance to continue feeding; such service is requested by the shippers.

The effect of a disallowance of any amount of money or any sum of money to my firm for the purpose of traveling either in soliciting or in rendering advice to shippers, would cause John Clay & Co. to lose the biggest part of the business; and it might have the effect of injuring our patrons by not permitting the necessary number of trips to the country. This would result from failure of the shipper to receive our judgment on how soon lambs were ready for market, *of it* they were ready for market, such a trip might save a feeder of lambs a large sum of money that might be lost by premature marketing of lambs.

[fol. 516] It is possible that they would continue to feed lambs beyond the necessary time or over-stay the market, which would produce a financial loss to the owner of the lambs. On trips I come in contact with solicitors from other

markets or from other firms, and that it is impossible to avoid this, but that if I do not solicit the business of our customers or potential customers I cannot expect to get the business and in most cases I have to go out and talk to the owners of lambs to get them to ship.

I have not had the experience expressed by Mr. Marshall, Secretary of the National Wool Growers that solicitors of sheep were running over each other in the solicitation of business throughout the west in certain seasons of the year; there are a fewer number of commission firms selling sheep than in the case of hogs and cattle, and that the Chicago market leads this country in the making of a price on sheep and lambs; and as nearly as I can judge it, the other markets in this country follow the Chicago market.

The failure upon my part and upon the part of other people engaged in the sale of sheep on the Chicago market would have a wide spread effect upon the general prices received in the United States for sheep, and that anything that is done to injure the efficiency of the Chicago market will hurt prices all over. I am rated by John Clay & Co. as their first salesman; the position I hold at the Chicago market is one of greater responsibility than held by any other sheep salesman in that organization.

[fol. 517] I do not think that the number of animals that I could sell in a day has anything to do with what John Clay & Company pays me as their first salesman, at their largest market. I do not believe I did any more solicitation, country traveling, than is absolutely essential in the preservation and maintenance of the sheep business of John Clay & Co. at Chicago; and would like to do more. John Clay & Co. receives sheep business from the entire country from the Pacific Coast to Chicago and from Texas to Chicago; also gets some from Michigan, some from Ohio and some from Indiana, east of Chicago.

A greater number of drafts is necessary to dispose of the same number of animals during the past two or three years and that there are a greater number of owners, and the lots have become smaller than are marketed on the Chicago market. It is harder to sell nowadays than in former years.

It is more difficult to sell drive-ins and truck-ins of lambs than if they had arrived by rail, and that a greater charge is made for the service.

I was called when I was leaving the sheep house at one

o'clock and I left the sale of the sheep in charge of an assistant and at 2:45 P. M. was not sold out. The patrons, owners of sheep that shipped to John Clay & Co. are more concerned about service than they are about the charge they make for commissions.

[fol. 518] The direct purchases of sheep and lambs has been increasing in the last several years, and such purchasing has an effect upon the demand for sheep that arrive, and the effect is detrimental, bearish.

The direct buying by the slaughterers of sheep has increased and it requires more effort and solicitation on the part of our company to maintain the business that it has and to get new business. I know of no other way to overcome the direct purchasing by slaughterers and direct selling by the owners than the personal solicitation or advertising that they do or have been doing.

For the benefit of the shipper, in order to keep prices up, the shipping to the market on Friday was discouraged. You could not take a proposed volume of business that a salesman could handle and multiply by the number of market days and expect it to come out in that fashion as to what a salesman ought to do in a year. There are instances where shippers consign livestock to John Clay & Co. without any advance notice whatever, and there are other instances where they are advised to ship at a certain time; and there are times when we advise shippers not to ship and also advise them to ship to another market besides Chicago, at certain times; it being our object at all times to sell the livestock at a point that we believe will net the most money for the livestock to the man that owns them.

[fol. 519] There are certain times of the year that sheep handle harder than at others due to weather conditions. A wet drove of lambs or a wet drove of sheep handle harder than a dry drove. You will get them when they have sleet on their backs, and in the latter cases it is very hard to handle. It will take a longer time to sort them.

Cross-examination:

There is no such time based on day in and day out, year in and year out, when you can say the actual sales start to take place; market conditions vary, the law of supply and demand control; whether the buyers are interested in a certain type of sheep or lambs is a factor. Any one of 50

different conditions might be the reason why there should be a holding off in making sales or why sales should be made at the opening of the market or the end of the day. Lambs and sheep are sorted closer on the Chicago market than they are on any other primary market.

Redirect examination:

It would take one minute to test a lamb. You may handle a drove of 125 lambs and sort them in 15 minutes or you may sort them in 25 minutes. In handling a drove of lambs, testing them for fattening, you may strike 50 or 60% of them and you may not need to handle all of them. In handling carload lots you would strike 50 to 60% in the carload. [fol. 520] John Clay & Co. make loans on livestock. We do appraisal work in connection with these loans to some extent. Might use one to three days a month; myself and my assistant might use more time. Some of the feedlots near Chicago are owned by the railroads and some by private individuals. Sometimes shippers give general instructions to market sheep from feedlots when we think they should be marketed, and most of the time we use our own judgment. Could not state definitely the largest number of carlots of sheep ordered from these feedlots on any one day this calendar year, at one time. It might possibly be that I have ordered as high as 20 carlots in one day from these feedlots and expected to sell them. Very often my assistant and myself work on one buyer in one pen at the same time and it is also frequently true that I show one pen to one buyer and make a sale of it.

I would say that the service you render a man is what brings the business, and solicitation to a certain extent on new business. It is necessary to solicit new business and the service rendered is the dominating factor in retaining old business.

Chicago is what is called a basic market and it leads the world. I can not answer as to whether our general reputation would cause shippers to continue to ship to these yards if the solicitation was abandoned, advertising and such means of getting business. The solicitation that I do [fol. 521] is to get the shipper to ship to my company instead of to a competitor. I think I am as good a sheep salesman as any at the Chicago Stockyards and I could sell as many sheep in a day as any other salesman. It would

not be reasonable to charge a higher commission rate for selling a single deck of stockers and feeders than for selling a double deck. My reason for making that shipment is that we have a single deck sorted out, a two or three car consignment, and we have a single deck sorted out for another two or three car consignment that we can work along and probably match up the one. It requires a little additional work, and I am talking about feeders only, not about slaughter lambs. I have never talked with our customers about commission charges, but that we are always telling them about the quality of the service rendered, meaning the quality of service as far as getting the most money out of the consignments, filling them, feeding them, putting them over the scales, with as light a shrink as possible. I do not always get the top of the market. C. A. Kleman & Co. does an order buying business. They buy from John Clay and from everybody; A. L. Williams is the sheep buyer for C. A. Kleman & Co. Solicitation is necessary to combat direct purchasing. I have no direct knowledge as to the success of solicitation in combatting direct buying. I have not been successful in getting a great many shippers to discontinue direct buying and ship to John Clay but I have gotten some covering the past two years. Direct buying is a detriment to the farmer; based upon my own deduction I also have known of sales made in the country that would [fol. 522] have netted more money on the market; the number of such sales I cannot say offhand. Some sales off the market might be higher than on the Chicago market but that would be rare. I do not know how many. The abolishment of direct marketing for one reason or another would not make it unnecessary to solicit business. We have to solicit business to retain some of our old business as well as to get new business; and I do not think service alone sufficient to retain the old business, but is a great factor. I do not believe that solicitation could be cut down at all if direct marketing were eliminated; if direct marketing was discontinued there would be more people to see to try to get their business. I should spend more time in the solicitation of business but he cannot get time to do so.

There are times when we are forced to carry sheep for two or three days; it all depends on your market conditions and the condition of the stock. It may happen one

day a week or it may happen two or three times a week. It would happen fifty-two times in a year; it is apt to happen more frequently, but I have no records.

Cross-examination:

I believe the best salesman as a class in this business in this country are selling sheep on the Chicago market.

JAMES L. MERRION, a witness called by the Government testified as follows:

[fol. 523] Direct examination:

I am frequently spoken of as Lee Merrion and reside at 10046 Hoyne Avenue, Chicago; am salesman and Manager of Merrion and Wilkins at Chicago, Denver and Ogden. The firm name is Merrion and Wilkins; is a partnership; the other partner is named Russell Wilkins, and he lives at Ogden, Utah, and is in charge of a branch house.

We have 28 employees including myself. We have but five employees at Chicago, including myself. We have reduced our force in Chicago during the last ten days; as it now stands there are four, to-wit: William Hager, Ed Matthews and Dale Phillips.

Mr. Hager is a salesman, and in addition handles correspondence, fills orders, buys on the market and compiles information for our own use and that of other markets. Mr. Hager is not an office man.

Mr. Matthews manages the office and keeps the books. Mr. Phillips is a yardman and stenographer. Our business is seasonal and this is the season when supplies are light. The volume from the first of July to the first of May is considerably heavier than it is from the first of May to the first of July. About January 1st have another employee, sometimes more. Had three more employees at the peak; their names being Ethel Phillips, a stenographer, Jim [fol. 524] Hoolihan, a yardman and John Barr, a yardman. The yardmen do no selling; yardwork in sheep being sorting and yarding, and watering and feeding and all that sort of thing. Mr. Hager sells on his own judgment and in every way acts as an ordinary salesman generally; at times when I am there and we work together on a string

of stuff, his actions are dependent upon my judgment, more so than when I am not. It does happen that Mr. Hager and I would be working on the same string or bunch at the same time, not dealing with the same buyer, understand in sheep there are many classifications, and they have to be sorted and sold and shown to different buyers, but on fat lambs or those desirable for packer use I might handle that and Mr. Hager another classification, the feeders or the ewes or something like that. I came to Chicago as an office boy for the Knollin Sheep Commission Company about 25 years ago and remained an office boy for perhaps two years. I worked as a student mutton salesman in Swift's packing house; being there for the purpose of being educated along the lines of the different cuts of sheep and how they are sold. At the time I was there my duties were principally filling orders and lugging beef. There happened to be a strike on at the time. I think I was with Swift for a year. I then worked in the yards as a sorter-yardman for the Lee Live Stock Commission Company, for perhaps a year; then I went to Omaha in 1914 and filled orders for lamps on the Omaha market, having a desk with John Harvey & Company; acting as an order buyer during the hoof and [fol. 525] mouth quarantine year. Was at Omaha one year; I then went to Sioux City and sold sheep for Fitzsimmons, Pierce and Frick, also the Lee Livestock Commission Company. I think I was there for two years, until 1917. After that I was in France for two years, then I came back to Chicago and sold sheep for 15 different commission firms at one time. And continued until 1926, when we established Merrion and Wilkins.

If I had sheep to sell I would not choose to send them to anyone to sell with less than ten years' experience. I would not feel that one is qualified to sell if all their experience was on one stockyards. I think experience as a buyer a valuable asset for a salesman—to know how things operate on the other side of the fence. I do not believe that one year's experience as a buyer would qualify one to step right out and be a salesman; some experience in addition to buying experience is valuable, but too much might not be an asset to a salesman. In the first place, a man who has acted as a buyer for 20 years, his habits are pretty well formed, and he is a bit old to get into the selling game, which is entirely different.

Our firm has either bought for customers or sold sheep for customers in 38 states last year; that the majority of them come from Montana, Idaho, Oregon and California. I would say 60% of our receipts came from the Northwest in general—Montana, Washington, Oregon, California, Nevada, Utah, Idaho, Wyoming and Colorado. And our busi- [fol. 526] ness is pretty well scattered. I would class sheep as native sheep coming from points east of the Missouri River, but do not receive sheep at Chicago immediately east of Chicago and Indiana. The sorting to be done, in handling natives, involves classifying the sheep for ages and sex. Western sheep are not so mixed up in so far as ages and sex are concerned. Dealing with natives, sorting for age, you have for instance, lambs, yearlings and aged sheep. Through a cutting chute you can sort the lambs off, their wool is quite a little different and their appearance and the size of the head. You can tell from the looks, the lambs and the yearlings, too. The yearlings are younger sheep, but to really know the age and sex of the older sheep, they must be handled, that is, caught and their teeth examined, as well as examined for sex, and they must be classified, ewes above a certain age, packer ewes under a certain age, and if they have the qualification of good breeders, they are sold as breeding sheep, and there are times of the year when even those that should go to the packers are sold for breeding purposes. It depends upon the demand.

As to the length of time to examine sheep to determine their age, if you have a sizable bunch and they are properly penned or shoved together, so that you can work them fast, with chalk, you can examine their teeth and examine them for sex and mark them so as to identify each animal very shortly. If you have the proper equipment and help as necessary, to get these sheep into the pen and get them [fol. 527] lined up ready, I would say that an hour and a half for 100 sheep would be the time necessary to give an examination and to determine sex would take some time longer. The necessary equipment we manufacture. It involves getting them out into an alley and measuring the space we think it will require using enough cross gates here and there to get the sheep into the proper enclosure. It usually takes more than one to tackle a job of that sort, and it would take more than one in order to complete the

job in the time stated by me—one man might do the marking. It is necessary to tighten them up as you go along, and it usually requires the services of two men to do the job and oft times more, but that estimate is based on the assistance for the man who is doing the job. Mr. Hager had a small following when he came with Merrion and Wilkins and he brought that trade with him, and it has been retained.

Most of the shipments from the West would be classed as lambs rather than sheep, perhaps 75 percent would be classed as lambs. They come to Chicago from California in May and in June they will come from Idaho, in July from Washington, later from Montana. The sheep marketing year starts off in May or the latter part of April with California unloading and the other states follow, Montana usually being the last State to market. There is sorting required in handling spring lambs. The purpose of sorting is to make them present a better appearance to the packer, we sort the feeders off and that involves sometimes a second sort for weight. Lambs of 90 pounds weight are [fol. 528] desirable in certain sections and we endeavor to cut those off, from 75 to 80 are marked. With any other localities and other buyers we classify them, we cut the feeders off and the feeders can be sorted for weight. If a man buys feeders he wants them uniform for the reason that uniform lambs feed better. If they are light and heavy, the heavier lambs would crowd the smaller ones away from the feed, and for that reason, they want them uniform, so it is our job to shape them up and sort them so as to present a good appearance to the man who might buy them. Then, there is of-times a demand for ewe lambs. We sort the feeders for sex and get those that are best bred, and have the characteristics of developing into good breeding sheep, and find an outlet for those to people who are able to handle them and want them. In handling Western lambs, the first sort is to take off the feeders, and if the lambs are well enough bred, have the characteristics of good breeding sheep, we sort the feeders for sex when there is a demand for them. We determine a feeder from the appearance and the way it handles, that is, we put our hands on its loin or back or handle the tail, which indicates the condition of flesh of the animal. Assuming that I had 200 sheep in a pen, 50 of which were feeders, and was asked

to approximate the time necessary to do all the things to determine that these 50 actually were feeders. We will say that they are Montana lambs in the month of September; with what facilities we have got down here, the time would depend a lot upon the amount of congestion you would run into, the facilities for sorting and pens for handling these sheep are not always available, and, however, if they were available, and if there were none of the factors that [fol. 529] you very often run into that stood in the way of getting these sheep done quickly, I would say that to get the 50 feeders off this lot of 200 would take an hour. And I would need one man to assist me. That would require running these through the cutting chute which would not take so very much time after you had them lined up to the cutting chute, penned and re-penned, and then going through the lot a second time with chalk and handling these lambs, so that you would get those that you did miss and hand-picking those and putting them back into the lot. You crowd them in order to mark them.

You would first cut them, look them over and try to determine how they should be sorted, and then cut them and to put a finish on the job, you go in with chalk and chalk off those that are in-between in flesh and rather than shrink them, the amount necessary that would be required in cutting them the second time, you hand-pick them off, and that involves picking the lambs up and carrying them out to the gate and throwing them outside. You understand that at that season of the year the natives are running quite freely as are the westerns, and there is a lot of classifying necessary, all of which takes up pens and facilities for handling these sheep, and you cannot run your particular lot of 200 out and force the other fellow to vacate the pens and facilities on the spot; you have to wait and take your time; and by facilities, I mean stockyard facilities, such as pens, alleys and so forth. At this season of the year (May) we [fol. 530] have several times more than we need, but when the peak receipts are on, why we are congested. In the case of lambs that packers will buy, to properly determine where they should sell or to whom they are most desirable, it is necessary to handle them. If they are exceptionally fat, there is no doubt in your mind but they don't run that way where there is a big percentage of each lot that comes in that way on the dead line or close to it, and it is necessary

to handle them and examine them carefully to determine where they should go. If they were all on the dead line we might show them separate first and see how they appeal to the other fellow, and then if they did not appeal or if they demanded part that weighed too heavy, we would classify them and sort them so there would be no doubt in the packers mind as to just what they were. I arrive at the stockyards early and sometimes late; between January 1st and July 1st, 7:30 A. M. Usually at that hour the sheep have been yarded. I go out actively to sell at 9:00 o'clock. Earlier I usually go down and determine what sorting is to be done, and how the stuff is best presented, as well as get an idea of what we have to sell and find an outlet for certain types that there is not a ready market for. From that time until the time I go down I attempt to get posted, get information on the other markets and I determine what the condition of the dressed markets are in the East and get information on all the factors that have to do with the market that day on the sheep. We also get information from our [fol. 531] offices at Ogden and Denver, we get the sales there, and we get the actual sales on the various markets. We get information as to prices from various packers in the East. Showing sheep to a packer involves putting a price on them. Assuming that I had 20 cars of what we call similar lambs, the same value, the same flesh and they are owned by different owners, some days none of the packers would seek me and other days they all do. I would attempt to determine the volume that, or attempt to find the packer who has made the lightest buy for the preceding days and who most likely would be the best buyer, and select him as the first prospect. I sold clipped yearling lambs yesterday for 6½¢ a pound. As to how I would start in to arrive at a price to sell lambs this morning to give my mental workings, there is not, at the present prices, the market value of dressed lambs is not as high as it should be to justify paying the prices, if it were not for the fact that by-products have increased considerably of this particular kind of slat. There are three grades, No. 1, 2 and 3. Number ones were worth $1.00 yesterday, the previous day's sale was 90 cents. The value of that same grade of shearling pelt six weeks ago was 25 cents and the value of the number two skins yesterday was 85 cents and number threes 70 cents. Six weeks ago they were throwing into the tank as worthless the number twos and number threes shearling pelts, so that the

meat today does not bear the full brunt of the price that is being paid now. In addition to the advance on shearling skins, other by-products now have an active market for [fol. 532] them. Insofar as receipts are concerned today, we have but seven thousand on sale, part of which are direct shipments to the packers.

Today there are probably twelve cars on sale other than those direct to packers. So regardless of the directs, they must have some lambs to sell, in the cooler to sell along with beef and pork, and there are a certain class of people who will buy regardless of price, so that it is reasonable to think the market will be stronger today. Furthermore, the lambs that are coming forward now from California, Kentucky, Virginia, etc., those are the states from which we are getting our receipts now, are light in the average weight between 70 and 75 pounds. These yearlings will average 90 pounds or better in weight. You can realize that for cutting purposes, that is, chops and roasts and the like, and the light animal or a carcass weighing 45 pounds, which is the approximate yield of one of the 90 pound lambs, would be more desirable for that purpose than the 70 to 75 pound spring lambs; and as the season advances and the weight of the spring lambs increase, there, of course, is less demand for these older lambs but with the advance, the appreciation in the value of these by-products, shearlings and others and extremely light receipts and the condition that I have just outlined here as regards the desirability of heavier meat, I would want higher and stronger prices than 6½ for that [fol. 533] type, if I had them. Clipped lambs are classified as yearlings the first day of June, that is today.

If I received an offer this morning of 6½ cents from packers, I would not immediately take the offer. I would expect to get stronger prices for them so I would want six and three quarters. If I received six and three quarters at the opening of the market, I might sell immediately. If I can get what I think they are worth early in the morning, I will sell them. It often times happens that small buyers on the market start off with an order, they have an order for but one car of lambs. If they see what they like and are willing to advance the market in line with what it should be advanced in my judgment, I would sell them. I might say that does not happen very often. From January until June we do not have ten cars per owner shipments, and it would not happen in one day any time during the year. We han-

dled five cars during the year from one owner, but do not recollect having received seven.

During October, 1932, I think I sold 15 cars. I do not recall the circumstances, the day or the date. The number of hours put in selling the 15 cars I would think to be eight hours, would be selling after three o'clock P. M. of feeders and odds and ends, and we work until they are sold. During our busy season we very often work until 11 or 12 o'clock at night. There is considerable congestion at that [fol. 534] time, and the process of handling that stuff is much slower than at this time of the year when the receipts are light. I do not make the practice of selling traders' sheep. Most of our receipts come by rail.

It is more difficult to handle and sell sheep that come in by truck than by rail. It would take two men to handle almost any lot of sheep, in a carload there might be 250 sheep requiring two men. In a truck load there may be 10 sheep requiring two men. The number of sheep in a car depends upon the season of the year, and where it is shipped from. From local country, sheep are shipped likely in single deck cars. From November on the average would be about 110 to 115 head to a 36 foot standard car, single deck. They are more double deck trucks in the last few years than formerly.

Q. Would you give us any thought that you have in regard to this situation, we will say, that 110 sheep would arrive by a single deck car, now consider 110 arriving by truck, just the way they do arrive at your pens, some would be a few in a small truck, others may be a greater number in a larger truck, could you then give us your own ideas with reference to the difficulty or how much more time and trouble it would be to sell the 110 arriving by truck than arriving by single deck rail? Now, that question is long and involved. Do you think you get it?

Mr. Boyd: I object to it. It is not long or involved enough to allow this witness to make a proper answer. I think it does not contain the basis for an answer, I think it does not contain the factors that ought to be given to this witness in answering a question of that type. The state of the market and the nature of the receipts, the congestion in and about the stockyards, all of those things have to do with the handling of livestock on this market.

[fol. 535] Mr. Miles: I will ask the witness to assume that all conditions are equal except the same number arrived by truck.

Mr. Boyd: And I should say to you that as a practical proposition that things are not equal around the stockyards. It is a hypothesis that is impossible.

The Examiner: Anything further from either counsel?

Objection overruled. Make your answer as I have suggested before as definite and clear and as accurate as possible.

The Witness: Do I understand that this 110 sheep are one shipment that comes by one truck?

Mr. Miles: You may, if that be the usual thing, you may assume that, or you may assume any other condition and explain just what you mean. In other words, Mr. Merrion, explain any answer that you wish in order to make the facts clear.

Mr. Boyd: May I interrupt you?

Mr. Miles: Most certainly.

Mr. Boyd: And advise this witness the object of his testimony and the importance of it by reading to him the findings in the previous case, Mr. Examiner?

Mr. Miles: Now, Mr. Examiner, it seems to me a witness that, up to the present minute, has shown that he is of unusual intelligence and a man who has honestly tried to answer each question propounded, certainly would not permit his testimony to be influenced either way by the explanation which Mr. Boyd wants to make.

Mr. Boyd: I think that being true the witness unquestionably will not change his testimony by what I am about to read to him as the findings in Docket 383.

Mr. Miles: Then, why read it?

Mr. Boyd: So that he may realize the importance of the questions and the necessity of getting into this record sufficient facts surrounding his answers, that an answer may not be picked bodily out of his testimony and used for the purpose of illustrating the capacity of a salesman or the difference between the handling. We have a cost study and a time study on just how long it took to do this work.

Mr. Miles: Mr. Boyd——

[fol. 536] Mr. Boyd: With a tab carried for the purpose so that there is not any question about it as to the actual time, and the assumption that this witness might make,

the Secretary, under the broad powers that he has, may be able to take a statement of this witness which is contradicted by better evidence, and use the one and discard the other.

Mr. Miles: I am merely attempting to get a picture of selling an equal number arriving by two different methods, assuming that all other things are equal, that is all I want. On cross-examination, you may develop anything. I have listened with a great deal of pleasure to your testimony which you have already given. That is all I want, is just a picture here, but you know we are getting along very fine indeed.

Mr. Boyd: Yes, sir, I have been letting you go as far afield as I reasonably could be expected without interruption. Now, I think you have gone beyond the pale.

Mr. Examiner: I will let the witness answer, and, Mr. Boyd, on cross-examination, you may read to him from the order that you have in mind now. Apparently Mr. Miles wants the witness to answer and the Examiner has tried to make it as clear as possible to the witness that what he is interested in is in the facts as you see them, as you know them. Is the question clear to you?

(Whereupon the question was read.)

Mr. Boyd: I would like to raise the further objection, Mr. Examiner, that the witness has not testified that he has ever made or attempted to estimate, or that he has ever had a shipment of the nature, of the kind indicated or that those circumstances have arisen in the performance of his duties.

Mr. O'Bryan: I want to object to the question, I am reserving my pointed objections for cross-examination, but I think that the witness, in answering questions of this kind, should be instructed by the Examiner that it is within his province to assume any and all data which are facts within his knowledge in describing the situation surrounding his answer.

Mr. Miles: Which is perfectly agreeable at any time that you want to assume a fact and will state that you have assumed that fact; that is perfectly agreeable. The Government is seeking only the facts in this case and we want your help.

[fol. 537] Mr. O'Bryan: In other words, my position is that the Government in its questions is giving the witness

no facts on which an answer can be based. Now, I feel, and I objected strenuously to this type of questions, that the witness should be definitely instructed by the Examiner that they may assume any and all facts which they, of their own knowledge, know to be facts in connection with the operations of handling and selling at the Chicago yards, and that their answer then should be based upon the facts which they have assumed and stated.

The Examiner: I have tried to make it as clear as I possibly could; all I wanted to do was to impartially get the facts and get them as definitely and as accurately as the witness can possibly give them. Witness may answer.

The Witness: As I have explained, but a very small percentage of our business comes by truck and any opinion that I might express as to the ease of handling one or the other of this type of shipment would be strictly a guess. Furthermore, if on this 110 head involved, as you made the question, Mr. Miles, if the 110 head comprised several different shipments, there would be just as many times the difficulty in handling that shipment as there were separate shipments within the lot.

If there were five owners represented in the single deck car shipment and five owners represented in these truck shipments; if there were five lots of 22 head each, it would take two men, as I have described before, to yard and handle that stuff, and find pens for it, all of which takes time and then another two men to handle the next lot, when they arrive by truck. When we get a mixed shipment or a cooperative shipment by rail they are handled as to unit lots, they get separate pens and until we sort them, there would be quite a little difference between handling one [fol. 538] mixed shipment arriving by deck and five trucks comprising 110 head. It takes more help, more time, more pens in keeping truck shipments separate. I could not give or approximate the extra time. In the case of a carload shipment, plural owners, they are sometimes handled as units, the shrink prorated. The same might be done with trucks but I have never heard of that being done, and I cannot imagine why they would do it. I could not have handled more business from July to May than I did handle with the same amount of help. I do not think I could handle 500 cars more or any number of cars more. As a matter of fact, our ability to handle sheep was taxed to its

capacity during most of that time. I think what we did sell was our maximum capacity; there was no time or no days during that time where we handled no sheep at all excepting Saturdays and Sundays. Very often on Saturday we have as many sheep to sell as on any week day, but not every Saturday, but during all of that time five days a week, and, during a large part of it we had market days six days a week.

Cross-examination:

During the peak season we would be unable to sell more sheep than we received, to properly handle, and to properly sell them.

In marketing of sheep, they follow the seasons, and that sheep, in order to be marketed have to be ready for market and there is no process that I know whereby sheep could be evenly distributed throughout the year so that a [fol. 539] salesman could use his time fully every day in the year actually selling sheep and doing nothing else. The weather conditions, the feeding conditions, and the breeding and types of sheep have to do with the season at which they are marketed. For instance, in Kentucky and Tennessee, where they have grass eleven months a year, they can lamb, they can breed their ewes so that the lambs come in December and January. Those lambs at four and five months are ready to be marketed, whereas in Montana, the season is such and feeding conditions are such that they cannot breed their ewes to lamb before the first of May, and in many cases as late as the 15th or 20th of May, which means that the lambs cannot be marketed before five or six months later, due to the feeding conditions in Montana. So, as explained, the season, the marketing season for the year starts off with California in the latter part of April and through May, and in May, Kentucky, Tennessee and States where they have grass eleven months a year join in, and then, as the season advances, these other states follow, Montana and New Mexico being among the last.

In September, you get the tail end of the Washington, Idaho and the Montana lambs, running in full volume and many other states fit into it making for a peak shipment. That is the season of over supply and the capacity of any selling organization is taxed at that time. Sheep produc-

tion works in cycles, usually five to seven years up and five to seven years down. From 1923 or 1924 until 1931, we were advancing in the production of sheep in this coun- [fol. 540] try. We reached the peak volume in 1931, and when we reached it, prices went off to a point where the business was unprofitable for the producers, and, consequently, they permit their ewes to acquire age and die off and do not hold young stock back for replacement, which means that the volume over the period of the next three or four years will fall off considerably, and an organization handling stuff must maintain at least a nucleus of their organization through the period of lean times and fat. Furthermore, when, as I say, the lean times in the sheep business come, as they will come next year and from then on for several years, the season, our dull season will spread over a wider period. What I mean instead of receipts keeping up in volume until the first of May, they will let up the middle of March and extend further into the summer.

We keep in our employ regularly a sufficient number of skilled men to properly dispose of what we believe will be the peak requirements in a year's business, with the addition of yardmen and help of that type which is required. It would be impractical to attempt to reduce the organization, so far as skilled men are concerned, during the periods of light receipts and increase them in periods of heavy receipts. You could not find them in periods of heavy receipts.

Chicago is the leading sheep market with reference to making prices on sheep in the United States; and the prices [fol. 541] that we salesmen make find their reflection at all other markets in the country. Any mistakes in price made at Chicago would find their reflection in other markets. I make soliciting trips, usually making a trip lasting 30 days; visiting our offices at Denver and Ogden and go west to the coast and back through Washington and Montana. On these trips I attempt to visit the larger producers of sheep and lambs.

As to the services rendered on these trips to producers which would reflect to the producer's benefit and not especially as to us, at this time we give them information as to the trend of the wool market, and the sheep market at this particular time because of the advances in wool prices, and

the reduction in sheep population of the southern and eastern states.

The firm of Merrion and Wilkins, in my judgment, as an owner and partner, did not do any traveling during the year 1932, which in the exercise of good judgment could have been avoided. I consider all of our trips very necessary, both to my customers and ourselves.

Salesmen have different methods that they use, different salesmen have different methods in the handling of their business that are peculiar to them. Salesmen become acquainted with the methods that are used by buyers at the [fol. 542] Chicago market over a period of years, and we change our methods as we believe it necessary to change them, and adopt different methods with each buyer. The methods which I employ as a salesman might be regarded more or less as trade secrets in some businesses. The length of time that it takes a person to perform a given duty depends somewhat upon the characteristics of the individual performing the service; one may be lazy, one may not, one may be active physically, the other may be slower, one may be less active physically and still be able to perform service more rapidly due to his familiarity with it. The fastest man in the performance of his particular function that Mr. Miles has inquired about might not serve in that instance the shippers as well as the man that might proceed more slowly, and the reverse may be true. The conditions on the Chicago market change fast at times.

It would be difficult to enumerate the varied conditions that prevail throughout even one market day, without attempting to estimate or to describe that multiplicity of obstacles that confronts me in the performance as a salesman on the market of the great size of the Chicago market. In selling shorn sheep we sell the wool gratis.

The normal tendency of a buyer is to want to buy cheaper always, and it is the reverse in the case of the salesman, his idea is always to get a higher price. The markets are slower [fol. 543] during the last two years than formerly. It is more difficult now to sell sheep than it was in 1923. Shippers had not complained to me about the charge made at Chicago. Most of them feel that if we can give them service, keep them informed and do everything to straighten out the present condition, that our service is not priced too high.

If our services were worth what the present rates were in 1923, they surely are worth the same now because of the increased difficulty of handling these shipments, the greater risk we take in handling the proceeds of the shipments, the banks failing all around, and the tendency on the part of the shippers to hold our checks, feeling they were safer than deposits in local banks. The way they reason and have the last year, has been my observation, is that they felt we had a stronger bank than they, and that we were bonded in addition, and that we had sufficient capital in our business to protect them. In 1923, in comparison, the financial conditions and general business was decidedly much better. Those are two of the reasons I can think of why, in my opinion, our service is worth as much as it was in 1923. It is hard to get a yard man whose counts are dependable and accurate straight through, and it is a very important part of a yard man's duties.

It takes five years ordinarily to become familiar with his duties so as to be a dependable yardman in connection with [fol. 544] sheep. With r our range shipments, most of our sorting is done at t e feedlots, and is done Saturdays and Sundays and weekends, in order to save shrink running the sheep through a cutting chute involves considerable handling and running around reduces their weight.

As to the effect of an order by the Secretary of Agriculture which would bring about a reduction in the amount of time that I could devote to soliciting business from new customers and maintaining the business we now have, keeping those customers shipping to us, I would do less business and would be able to give his customers less service, and that such action on the part of the Secretary would be detrimental to our producers and ourselves.

Q. Do you believe that you spent more time or that your firm expended a greater sum of money than you deemed necessary in the proper functioning of the business of Merrion-Wilkins during the year 1932?

A. I do not think so.

Q. Do you think it would have been policy to have done a greater amount of that sort of work and thereby expended a larger sum of money than you did expend?

A. No, because we do not seek more business; we do not want more business than we can properly handle, and, as

I have explained before, we are doing a good share; in the year 1932 we handled as much as we could properly take care of.

I believe as a class the salesmen on the Chicago market are superior to those found throughout the country selling sheep.

[fol. 545] Q. You answered a question that Mr. Miles propounded that drew from you an answer to the effect that sometimes you think in October, 1932, you may have sold as many as 15 cars of sheep in a day, is that correct?

A. Yes, sir.

Q. Now, do you mean by that that you and you only sold the sheep and that no one else showed them or had anything to do with them, no other salesman?

A. Well, I think on a peak day, I myself showed that many sheep.

Q. Showed and sold that many sheep?

A. Yes.

Q. Is it not possible that on the next day, the next market day after, that it would not have been possible, due to a changed market condition, to have sold half that number or a third that number?

A. We often run into markets where it is very difficult to get action and that we could accomplish less.

Q. Do you want the Secretary of Agriculture to understand that it would be a fair basis to fix rates to assume that you would be able to sell if you had them to sell, as many as 15 cars of sheep on every market day at Chicago?

A. No, I don't want to make that answer. However, you understand, that we have no control over receipts and at times you are forced to do the best you can and handle more than you would like to handle, that you know you can competently handle.

Q. Of course, that is during the peak seasons?

A. That is during these exceptional days.

Q. And it would be an exceptional case where you would be called upon to sell 15 cars in a day?

A. Yes, it would.

It would be an exceptional case where I would be called upon to sell fifteen cars in a day. It would be difficult as a

salesman on this market to accomplish. In the second place, [fol. 546] it would be impossible to get the receipts, and I am quite sure we have made such economies as we believed desirable and necessary from our point of view, taking into consideration the welfare of the men that we served during the year 1932.

We have not resorted to exorbitant methods of getting business or maintaining and running and operating the business of Merrion and Wilkins.

We limit the sending of the Chicago Daily Drovers Journal to our patrons as much as possible. It describes the market more fully than we could describe it.

The Chicago sheep house is the coldest place in the yards, for the reason that it is damp, the sun never gets at it to dry out the ground and the sheep steam once they hit the sheep house. It is necessary to handle sheep when their backs are usually covered with ice and when there is ice covering the wool on the backs of the sheep during the cold weather. It is rather painful to handle very many of them. As a matter of fact, you cannot handle them as you would when the weather is mild.

Q. Mr. Miles asked you if Mr. Hager had a following at the time you engaged him, and I think you said that that was true.

A. A small following.

Q. You did not employ him in any sense ni order to get the following, but you employed him for the purpose of ac- [fol. 547] quiring his talents in this business?

A. That is right.

Q. The following have anything to do whatever with the employment of the man in your judgment?

A. No, as a matter of fact, when he first came to us, he thought that he controlled enough business to justify his salary, but after six months we discovered that the following did not materialize and we made him a straight out and out salary deal, not considering that his clientele was much of any value to us.

It has not been my experience, as expressed by Mr. Fred Marshall, that the lamb and sheep growers of Marshall's organization have a feeling that there was too much solicitation, too much of an attempt on the part of salesmen, livestock commission men, to serve or render country service,

and found considerable fault with any allowance being made for that service in the rate which may be found reasonable. We do no more soliciting than we think necessary. It is important to properly grade and sort the stuff for market, and it is a very valuable service to the feeders. I am sure they are not objecting, but to a man like Marshall, who would witness the proceeding, it might look like it was overdone.

The sorting I do is at the feed lots after the sheep are shipped down, and it is always at the invitation and request of the shipper. As to whether I know any way that we [fol. 548] could reduce the expenses of Merrion and Wilkins in the conduct of business at Chicago without materially reducing the character of the service now rendered for the benefit of the men we serve, we could not do with any reduction of our present staff; traveling and advertising expenses are just as low as we think we can get along with and I do not know of any reduction other than to cut salaries further which I do not think advisable.

The law of supply and demand is the principal element in buying and selling. There are not any two days on the Chicago market year in and year out that are analogous; each day some one factor occurs which did not occur the day before which effects selling and buying.

The traders are an important economic factor in creating an outlet for breeder and feeder type of sheep.

Redirect examination:

On some sheep where you are not quite certain yourself as to their value, you price them perhaps a little higher than you think they will sell so as to try out the other fellow's judgment. We might try half a dozen other buyers before we are convinced we are wrong.

We did not reduce our expenses in any way during the year 1932, and in 1932 the only reduction we made was in our force when we reached the season of extremely light receipts.

[fol. 549] We did not cut salaries, during our busy season, which is approximately nine months a year, the force I have work long hours, very often are there until ten, eleven and twelve o'clock at night from early in the morning, and under those circumstances I did not feel that a reduction was advisable, and now with the advanced cost of living and

the prospect of a further advance, I don't think it is advisable to attempt to cut.

Mr. Hager and I took turns at staying late to sign checks and mail and that sort of thing, but our business, we prepared contracts and set-ups for western growers down here in the corn belt, accounting for those contracts was considerable; there was considerable work, bookkeeping and office work attached to it, and it delayed our business considerably.

Speaking of hazards, during the year 1932, banks were failing everywhere. Therefore, this money here and there was a risk and we found that many of our customers would request checks which they would hold for rather a long period than they should hold them and they reasoned that we did business with a stronger bank than they and that they were triply protected in that we were bonded and we had enough money in our business to offer protection even in the event the bank failed, they must collect, and, if we could not make it good, the bonding company would, so that [fol. 550] they were inclined to hold these checks, causing a float to be built up which we were responsible for that we did not run into in 1923 or 1922 or back a few years ago. With times as tough as they have been, there is the selling of mortgaged or stolen sheep, within the past year that has been rather great, although we carry insurance to protect ourselves in that respect. We have sold feeders and stock sheep to people who thought they had arrangements made to pay for them, but when the sheep were finally bought, their arrangements did not work out. We attempted to make certain that payment would be there before we shipped them out, and thereby saved a loss, or if we had, in a few instances, these old customers with whom we had done business before, and we had every reason to think that their finances were O. K. but they did not prove to be.

In the instance I have in mind, we did not sustain any loss, because we happened to know of another customer at this point who wanted a similar type of stuff and we were fortunate in avoiding a loss there. I cannot think of any other hazards off-hand.

I go into the Northwest, to solicit business and usually call on those people who handle the largest volume of business and have the most influence in the community I visit and talk over their business with them. We do not have a

policy with respect to expense for soliciting, but we equip [fol. 551] each man on the road with an expense sheet, together with a form he has to fill out each day outlining just what he has accomplished and what his expenses are, and we know approximately what they should be, because we have covered the territory and in that way we hold them down to a reasonable expenditure. We do not budget our soliciting or advertising expense. Mr. Hager also does road soliciting for our firm from the Chicago market. We advertise in the trade magazines and special issues of various papers that we think might be beneficial to our business. We do not advertise in newspapers. Very often from November until the first of April we have shipments arrive one day that are to be fed and cared for here in the yards and it is necessary to carry them over. If in our judgment sheep should be held over to acquire a fill, we do it. We do not carry them over if we think we can get what they are worth. I believe that I sold sixty percent of all the sheep and lambs sold by our firm at Chicago.

Mr. Hager was with us for a time on a commission basis as his business did not materialize we put Mr. Hager on a straight salary and disregarded his trade. When he first came with us his salary was $50.00 a week. I think the man with a moderate volume that has five or six cars a day would do better for his shippers than the man who has a car now and then. The continuation of rendering good service is of more value to the firm than the active solicita- [fol. 552] tion that we do in the field.

Assuming that all market agencies doing business at the Chicago yards were to cut squarely in two the money which they spend on soliciting and advertising, I think it would hurt them considerably. You know there is considerable direct buying, there are what I mean the small packers at each cross road, they are picking up and attempting to take receipts away from the central markets. To cut soliciting and advertising expenses in half it is reasonable to think that those cross road packers might make considerable headway and do the business that comes to this market now, and all of the markets. We have at Chicago eastern and western markets starting to pull business away. If they were to no longer contact the people they do through this advertising and solicitation, it is reasonable to think they might lose business to those points. Under those cir-

cumstances the western markets would absorb considerable of that business.

I think the contact of the commission man has much more of an influence with the people who ship than does the Stockyards Company soliciting. The direct buying of lambs has increased in the past few years. If it had not been for solicitation it is hard to say what might have happened. As to whether salesman here have greater experience, longer experience than sheep salesman at other yards, I do not know what the average experience at the other stockyards would be. In explanation of the reduc- [fol. 553] tion in this firm's business between January and February, lambs go on feed, as I explained, the peak movement of lambs from the range country is in September and October. The thin lambs go into the feedlots into the hands of the farmers in the corn belt to finish them and the peak volume finish is off in late December or in January, or the volume decreases until the Coloradoes come in, Colorado usually markets during March, April and May. My recollection as to what happened during those two months is not very clear. I think that the reason for not selling as many sheep in February as in January was that we received less sheep. We do not have at Chicago in our employ any man who buys exclusively. Mr. Hager does some buying and so do I. We also do the selling. I have been engaged in order buying for five or six years, buying for packers, farmers and feeders. Packers plants for whom we buy are located at Milwaukee, Cleveland, Cincinnati and Baltimore. An order buyer must know sheep and he must know markets. Approximately must have the same information as is required to make a salesman. In buying for packers we first quote the market to them and tell them what we think it will be, the usual form is to place an order for so many at the markets. Sometimes they specify the price. However, it is usually at the market or "Use your own judgment." We buy and fill orders from whoever has them to sell, the type we want on the Chicago yards. [fol. 554] We buy from traders to fill orders as well as commission men. The time we start to buy to fill orders depends upon what we think of the market; sometimes we start out early; sometimes even stay late; and sometimes work at it all day off and on. The main thing is to get the thing the man wants, which in the case of these par-

ticular people we deal with, they are usually in the minority, that type of sheep. We started order buying when we established the firm of Merrion and Wilkins. We both advertise and solicit order buying business. We solicit the business from packers throughout the country who we think would be interested. The advertising which we do is the form of personal letters largely in the order buying branch of the business. We do not send out market letters to the buying side at this office. Our main solicitation with respect to buying is done by wire and telephone. Buying on order we buy feeder lambs, stock breeding sheep, fat lambs, fat ewes, thin ewes. We buy on orders for traders or speculators. The class usually bought for the packers is fat lambs, fat sheep.

I do not know how many carloads I have bought on a single day in the year 1932 or 1933 for all combined.

The greatest number of sheep I had bought in a single day in the year 1933 was possibly 10 cars, was not certain. Might be eighter single or double deck, 1500 head.

Explaining the difficulty in buying different classes and grades of sheep, the fat ones and the stockers, buying stock [fol. 555] sheep involves examining them for sex and age and other characteristics and buying them in small lots so that when you have a car, or several cars complete, you have a uniform lot, that is, uniform as to weight, quality, and condition. Buying feeder lambs usually involves sorting those of a certain weight uniform out of a string, or if you buy them in small lots taking off those that won't suit. We are required to buy any of this stuff, they specify the weight usually, and the condition and we must buy them within a pound or two of the specified weight. And buying fat lambs involves handling them for fat, determining whether or not they will suit. We must, for instance, during the early part of the season, buy lambs that will dress 47 per cent in New York. They are desirable, and if they fall below 46, the cost runs too high and we must select the kind that will conform with those dressed weights after the shrink or driftage in weight between here and New York. In buying butcher sheep as compared to stock sheep, the stock sheep are not always available, and it is necessary to buy them in small lots and make them uniform in age and weight and conformation and all that. The feeding sheep are classified as feeders and the breed-

ing are classified as stock sheep. In the fall of the year we buy more stockers and feeders than we do fat lots. Usually [fol. 556] you cannot fill an order for 100 stocker sheep at Chicago within a day. It is a matter of four or five days, generally. Your assumption is based on the fact that they are available, but they are not. I have reference to stockers and feeders. We very seldom ship sheep we have bought by truck.

All other things being equal after the sheep were bought there would be very little difference in the time of handling 100 head from the market by truck and 100 head by rail so far as the commission firm is concerned. In buying for shipment by truck we generally buy smaller orders. In starting out to buy 10 head it would require considerable time in inspecting what is offered in finding 10 head to suit the order and probably as much time would be involved as if you were to buy a larger number. I do not know that it is more difficult to buy sheep on order than it is to sell sheep on consignment. We are not able through the course of a year to fill every order that we receive. The type of stock that is ordered is sometimes not available; sometimes orders are received too late to execute. The kind of orders we usually receive too late to execute are a stocker and feeder sheep. Orders usually specify ship today As to whether the Chicago market could absorb more sheep than it receives, if it were possible to make supplies uniform through the year, we could advance our volume, but be- [fol. 557] cause the sheep acquire the market age different times of year, depending upon weather conditions and that sort of thing, it is hard to make for a uniform or rather a consistently uniform supply on the market. The Chicago market could absorb more sheep if they were available, but could not approximate how many by percentage. The number of carloads of sheep we can buy in a year would depend entirely upon the volume, the receipts, the availability of the livestock, and more than anything else whether or not we have the orders, and in so far as stocker and feeder sheep are concerned, the demand for them during the past year or two has been very light. It is reasonable to think that the demand will increase because of prices advancing now, but, if we were to devote all of our time to order buying alone, I should think we could do more business than we now do. Just how much would be

a guess. Based on the volume we handled last year at the peak season, we could not have handled more business and handled it efficiently. If we had had 50 carloads additional in a week, I would, if that were my experience, have increased my force or made some other arrangement, an arrangement to handle them and give them better service than we would have been able to with our present force. If we had been confronted with that condition for one week only, I would have made some temporary arrangement if I knew it was going to last but one week. I think I would not have attempted to handle it with our present [fol. 558] force. I would say 20 percent of my time is devoted to buying on orders and the balance to sales; during three or four months of a year, we handle very few orders. When we purchased 25,000 head during the month of January, 1932, I think that was the largest month we ever had. I don't know just how much of my time I spent in order buying in January, 1932.

On the Chicago market, in a broad sense, it is generally true that when it is easy to buy, it is hard to sell, and when it is easy to sell, it is hard to buy.

Mr. Charles A. Mallory, a witness called by the Government testified as follows:

Recross-examination:

Direct examination:

I live at the Hyde Park Hotel in Chicago, and I am the salesman for a live stock commission company. I am employed on a salary and a commission basis, also by Wm. Gentlemen & Son. I get a certain salary and then I get a certain percentage or commissions from the business that I control. I have a certain clientele of my own, which might be 100 cars per year and it might be 300 cars, cattle and hogs principally. I sell hogs, and have acted in that capacity for Wm. Gentlemen and Son for four years. On September 1, 1873, I started with a firm that was owned [fol. 559] and controlled by my father as a yardman. I worked in that capacity for about a year. Then I went into the office to have the experience of all branches of the office

work. I stayed there about a year. Then I went back to the stockyards and in about five years from the time I started I began selling hogs. About 1882, my father and I organized a firm and we continued in the commission business under three different names because of partnership arrangements until 1902. In the meantime, my father had passed away and I disposed of the business then u-der the name of Mallory Commission Company, which was doing about the largest business on five of the markets, and went to Mexico City to engage in the packing business. In about a year and a half I came back, and having agreed at the time I sold the company not to re-engage in the business at Chicago for five years, I secured a position in the South Omaha stockyards. After two years there, I was recalled to Mexico City as the packing business had been financed, and remained there for ten years as manager and superintendent of live stock and sales for the Mexican National Packing Company. The Mexican government took over both of our plants and everything that we possessed. Upon reaching the United States in 1915, I rested for about six months and came to Chicago where I was employed by Bowles Commission Company, and had some of the stock in the company; was vice president and a year or so later they opened a house in South Omaha, and I went there as [fol 560] manager for the company. About 1925, The Bowles Live Stock Commission Company sold their Omaha business and I was employed by John Clay and Company, as manager of their hog department, which position I held until the present one. In addition to the hog business, I control, I sell some of Wm. Gentlemen's & Son hog business. They have one salesman besides myself and he is one of the Gentlemen family. The growth of the truck business has been very pronounced and I believe that the records will show that there are more, a larger percentage of hogs delivered at Chicago market this year than for any similar time. The handling of the truck business is more expensive to the commission men and the fact that the direct buying has reduced the business previously handled by the commission men naturally takes that much revenue away from the commission man. There are not half as many firms here now as there were fifteen years ago. I could handle more business if I received it myself. I think I am better able to sell hogs now than I ever was. I have

had more experience. My firm sold one day with four salesmen in the early eighties, 126 cars. I do not think I could sell as many hogs now as ever, because conditions are so different. For instance, it was much easier in my judgment to handle forty cars of hogs under old circumstances with natural competition than it is to handle six cars today. On Wednesday our firm had 400 hogs, exactly, [fol. 561] and those hogs were sorted and sold and it required 44 drafts over the scales to finish the selling. Now, with the old system, you could have 44 loads and 44 drafts and do the work much easier. About 180 of the 400 head came by rail and the balance by truck. Of the rail shipments there were three cars belonging to two owners. I would say there were 25 owners in those coming by trucks. Mr. Alex Gentleman sells the standard grades and I sell the others. The standard grades are the better grades of all weights such as the shippers and the small packers and city butchers buy as a rule. I sell the packing house hogs, the old sows, skips, inferior hogs of all weights, and pigs and rejected hogs and odds and ends.

No hogs are consigned to me; they are all consigned to Wm. Gentlemen & Son. We employ two yardmen to bring the hogs up from the chutes, or from the places where they are yarded from the trucks and to help sort them, and to feed and water them, and to weigh them. I get up to the office at 7:00 o'clock, change my clothes, go up to the chute house, that is the office of the stockyards company, where they post the bulletin showing the arrival of stock consigned to all parties. I get the names of all of the shippers to Wm. Gentlemen & Sons, of hogs that arrive by rail and [fol. 562] also by truck. Then I go up to the selling pens and after the hogs are brought to the selling pens by the yardmen, I sort the hogs up in accordance with my judgment as to how they will be most attractive to the buying interests, and by the time Mr. Gentlemen arrives all of these consignments are put on a card, with the names of the owners, the number of head and the pens in which the hogs are yarded. Mr. Gentlemen looks them over, uses his judgment as to who will be the best buyers for the various kinds, and then the way the business is now; waits for two or three hours before he can do any selling. We have a rule which provides the opening of the market at 8:00 o'clock and closing at 3:00 P.M., but that rule so far

as the buyers are concerned, does not amount to anything, because they seldom start buying hogs until about ten o'clock, except sows and odds and ends which are often sold before nine o'clock. As a rule the kind of hogs I sell are sold earlier than the good hogs. Fifty percent of the kind of hogs I sell are sold to speculators or to small butchers. I sell the standard grades if Mr. Gentlemen is not there.

After sixty years of experience, I would consider that I might be competent to sell the standard grades. Yardmen assist me in sorting hogs. My procedure in negotiating a [fol. 563] transaction, the first thing to do is to decide who would be the best man to purchase them. Sometimes it might be one class of buyers and sometime- it might be another, owing to the circumstances and the conditions surrounding the market. We show the hogs to one speculator and ask him a set price for them. He might bid you 10 or 15 or more or less, but we would trade together, dicker, and if we would agree on a compromise or anything of that kind, we would go out of the alley, and if we could not agree on a compromise or anything of that kind, he would go out of the alley, and I would get somebody else, and we would work that way until I would find someone with whom I might agree, or who would agree with me, as to the value of those particular hogs. In basing my judgment as to the price I am going to ask for hogs, the principal item would be what I consider common sense as to the conditions surrounding the market; the receipts would be one factor, the value of the hogs and hog-products would be another, the price current on competitive markets would cut some figure, and the attitude of the various buyers whom I came in contact with. Intuitively I equip myself with that information every day. The stockyards company maintains a blackboard in the lobby of the Exchange Building and the U. S. Department of Agriculture post on this blackboard every morning the estimated receipts at the principal markets. [fol. 564] That, of course, we see before we go out to sell the hogs. My duties in connection with transactions after sale is made consists in the general supervision of the hogs to see that they are properly looked after by the yard man and do some of the work of that kind myself, and help to weigh them. We help sort them and help to weigh them at the scales. I always help do the weighing. After the

weighing is done, I mark the names of the owners on the ticket and the pen number on the ticket so the salesman can recall when he gets the ticket on which he marks the price just what hogs they are. I mark the price on the ticket covering the hogs I sell. After the hogs are weighed, the tickets for the standard hogs are taken and given to Mr. Gentlemen who is at the head of the alley where we do our selling and he marks those tickets, marks the price on them, and then those tickets and the ones I mark, are put together and sent to the office.

I have quite a good deal of correspondence, writing letters accompanying account of sales, and answering certain letters relative to the hog branch of the business, soliciting business.

I write a letter to go out with each account of sale, and remittances are made by check in most cases.

We handle consignments by rail in which there are more than one ownership in a car. As to how we handle a carlot of that kind, it depends upon how it is shipped in. If it is [fol. 565] shipped in as a co-operative shipment, we always have what they call a tally sheet made out by the manager of the co-op company, which gives the number of hogs, weights, how they are marked, and also the weight of the various hogs, and those hogs, as a rule, unless we have orders to the contrary, are sorted according to grade and sold that way, and then the shrink is pro-rated, and the price is made according to the hogs as sold, either standards or seconds, or whatever the grade may be. We do not always weigh them for ownership, unless we have orders to. We have quite a good many plural ownerships. In the case hogs are received by trucks they are handled much the same way except that they have to be weighed separately for marks. We may sort them and grade them the same as we do the others, but in weighing them, they must be weighed for marks in order to preserve the individual ownership. Occasionally we receive as many by trucks as we would get in a single deck car, not very often, but occasionally. I have observed that there is an increase in the size of the consignments by truck. As a rule it is more difficult and requires more labor to handle truck hogs than it does hogs by rail. In the first place, the consignments by truck are usually small numbers, comparatively speaking, and those have to be taken from the lower part of the yeards

where the trucks are unloaded and taken up to our pens, [fol. 566] which requires quite a bit of time and requires the help of at least two men if we have any number of truck hogs. Then, when they come up to the alley, it requires a pen for almost each bunch unless we sort them and grade them. Then, we can put sometimes two and sometimes three small bunches in one pen, but they all have to be weighed separately which makes more than double the work in weighing the hogs as well as in bringing them up and preparing them for sale.

Whether we sort them according to grade and put different ownerships together, depends on the condition of the market, whether it will be a fast market or a slow market, or a higher market or a lower market, it all depends upon circumstances. We have to use the best judgment we have, taking all those factors into consideration.

The stockyards company men do the feeding. I think 75% of the truck hogs are fed. There is no difference in handling second hogs from fresh hogs, excepting in the condition of the hogs. By condition of the hogs, I mean some of the hogs that are turned over to the commission men by traders are what we might call the poorer or second grade; very seldom have any of the top grades because they handle them as well as we can. As a rule the less desirable grades or poorer grades are harder to sell, depending on the condition of the market.

[fol. 567] The demand, the regular demand for the poorer grades is not equal to the regular demand for the standard grades, and if we have a surplus of the poorer grades, then it is hard work and takes a lot more time to find a satisfactory buyer for that class of hogs. The usual outlet for that class of hogs is the city butchers or city packers. They buy most of them. They are handled in small lots, comparatively speaking. As a rule, trader hogs are fed before they are brought to our pens. Sometimes the speculator himself would bring them or have one of his men bring them to our pens.

I could not attempt to tell you what factors determine the number of hogs that a salesman can sell. I would not want to attempt to describe what might limit or what might not, because there are so many different mentalities and different human beings.

As to the factors that would limit or determine the amount of hogs that I could sell, whether or not I could physically get around during the session to sell, probably would depend a good deal on the number of hogs I might be able to sell, and a great deal would depend upon the condition of the market. If you had a fast market you could sell a whole lot more hogs than on a slow dull market such [fol. 568] as we are having now.

By what I consider a fast market is a market where we have good competition, where buyers come out early in the morning and act as though they really wanted to buy hogs, and after looking around for a short time and finding that they are unable to buy their hogs at the price they originally bid, they raise their price and meet the demands of the salesmen and the sales are made quite promptly. On a slow market such as most of our markets have been for some time past, outside of a few odd hogs and a few sorted hogs which shippers occasionally buy the regular buyers start out bidding anywhere from 10 to 25 cents lower than the prices of the day before. The salesmen do not believe they would be justified on behalf of their shippers to sell the hogs on that basis and the trade is often slowed up for four or five hours, as it has been recently, and hogs were not sold until after 2 o'clock; when on a fast market the hogs would be sold before 11 o'clock.

As to how such conditions affect my operations as a salesman, on a fast market we are able to get earlier in the day prices which we consider are satisfactory or would be satisfactory to our shippers and also to ourselves. On a slow market such as I have described, it is very difficult for any salesman to make up his mind during the first three or four [fol. 569] hours just what to do, whether or not something might not happen to cause the buyers to raise their hand, as they have done on a number of instances, such as they would do, and in that way we could hold off until two or two thirty in the afternoon before selling, which I consider a slow market. Sales on a slow market are not as satisfactory as on a fast market, but as a rule the trade has been educated to sell their hogs each day as they arrive to the very best advantage possible. We do not make a practice of holding hogs over for future sale. And that is my general observation, with some exceptions, of the methods em-

ployed by other commission houses selling hogs. Sometimes we are forced to carry over a few hogs.

Q. If you had all the hogs you could handle, how many do you think you could handle in an ordinary day on this market?

Mr. Boyd: I object to the question for the reason that the witness has not indicated that that condition has prevailed with him or that it can under any hypothesis prevail with him. The receipts to his firm and to other firms are seasonal. The receipts that he can sell depends upon the consignments, upon his ability to persuade shippers to consign livestock either to him or to William Gentlemen and Son. It will be of no probative value in this case for this witness to attempt to guess at how many he can sell without any factors whatever being given to him. He has described the difference between slow and fast markets; he has described that there is a difference between hogs that he sells and hogs that other salesmen for the same firm sell, and that it is generally incompetent.

Mr. O'Bryan: I wish to object to the question on the ground that it only takes into consideration one factor, namely, that all of the hogs he receives under current con- [fol. 570] ditions, which I imagine he is testifying about, can be disposed of on a dull day as well as a fast day, and that it does not take into consideration any of the other factors such as the prices for which they are offered, the packers' demand, the yield, or innumerable other items which I think should be considered or asked about before the witness is asked to answer an ambiguous and general question of that type:

Mr. Dagger: We submit, Mr. Examiner, there is no ambiguity in that question.

Mr. O'Bryan: All right, I will point out just where it is ambiguous.

Mr. Dagger: Will you let me finish, please?

Mr. O'Bryan: Yes, finish.

Mr. Dagger: Objections have continually been made in this record designed to confuse and intimidate the witness, all of them based on the general proposition——

Mr. O'Bryan: I object to the statement "intimidate".

Mr. Dagger: Let me finish, please. All based upon the proposition that the witness has not told the difference

between an active day and a dull day. Now, that this witness has honestly and fairly stated in this record the difference between a dull day and an active day, counsel still is not satisfied and wants to still further confuse and muddle the record, and we insist that the witness be permitted to answer a fair, straightforward question in a fair, straightforward manner without being confused and intimidated.

Mr. O'Bryan: I object to the use of the word "intimidated" and I will ask the witness if anything I have said to him while he has been on the stand has been in the nature of an intimidation.

The Witness: Absolutely not, and nobody else has.

Mr. O'Bryan: That is right.

Mr. Dagger: Mr. Examiner, counsel now requests that he be permitted to examine this witness and ask the ques-
[fol. 571] tions and not until the Examiner gives permission I request that no one else question the witness.

Mr. O'Bryan: It is perfectly all right for the Government to assume anything and no one can run counter to it.

Mr. Dagger: It is perfectly proper for you to make objections.

Mr. O'Bryan: Well, I am making an objection. You state that there is no ambiguity connected with your question and I will now point out to the witness the various ambiguities which are in your question, First, it is not a question of a dull day or a fast day. It is a question of price. It is quite apparent that this witness could sell all the hogs that he could lay his hands on if he was giving them away, but quite the contrary if there was no demand. If the packer buyers had their coolers full of fresh meat, if they had killed heavily on directs, three days prior to the time and they were not bidding for hogs, he could not sell on any basis. Those are the kind of factors that I want this witness to consider before he answers an ambiguous question of the kind that was asked him.

Mr. Dagger: Mr. Examiner, I move to strike the statement of counsel inasmuch as he represents only the order buyers.

The Examiner: Motion to strike denied. Now, Mr. Boyd.

Mr. Boyd: I have no desire to attempt to intimidate this witness. All I wanted is that he be certain he understands the question. The objection I raise to the question is to its indefiniteness—that it sets forward no facts as to the

nature of the hogs when they arrive or anything about it. It just overlooks the entire marketing process of Chicago and attempts to ask this witness to make a surmise as to what he could do if he had it to do.

Mr. Dagger: I further move to strike the statement that Mr. O'Bryan made on the ground that it purports to be testimony in this record as to what marketing conditions are and what a witness should consider, attempts to be a statement of facts injected into the record by some one neither sworn or qualified.

[fol. 572] Mr. O'Bryan: I might state that if counsel for the Government would ask for the facts as to what create a market on this record, it would not be necessary for counsel for the Respondent to warn witnesses as to what those facts might or might not be.

Mr. Dagger: I might say for your benefit, Mr. O'Bryan, I feel perfectly competent to examine this witness.

Mr. O'Bryan: I know you do, there is no question about that, but you want to examine him in your own way.

The Examiner: Anything further, gentlemen, on the question? Objection overruled. Read the question.

(Whereupon the question was read.)

The Examiner (continuing): Now, again, Mr. Mallory, all I am interested in is getting just impartially the facts, and again I am going to say that I want you to be just as fair and accurate and definite and complete as you can be, so that we can fairly get the facts which is all I am interested in.

A. I would not feel competent or able or willing to even attempt to say how many hogs I could handle except on certain days when the hogs were really in my possession and I knew just what the market conditions were, but I will state that no matter how many I had, I would make a very heroic effort to secure for the shippers the very best price the market would warrant.

Mr. Dagger: Will you read the answer, please?

(Whereupon the Answer was read.)

Mr. Dagger (continuing): I take it, then, you have not any idea what your capacity is as a salesman?

A. I would rather somebody else would judge that.

Q. You would not know that, even on the basis of your many years of experience?

A. I do know my own opinion of it, yes, but I would not think my own opinion would be worth much. I have never failed yet to sell all the hogs that were put in my possession to sell.

[fol. 573] I would not feel competent or able or willing to even attempt to say how many hogs I could handle except on certain days when the hogs were really in my possession and I knew just what the market conditions were, but I will state that no matter how many I had, I would make a very heroic effort to secure for the shippers the very best price the market would warrant. I would rather somebody else would judge my capacity as a hog salesman than myself. Even on the basis of my many years experience, I do know my own opinion of it, but I would not think my own opinion would be worth much. I have never failed yet to sell all the hogs that were put into my possession to sell. I do not believe in superlatives, but I do believe I am one of the best (salesmen) that there is. I do not know the capacity of the best salesman. I think I can sell as many hogs as any other salesman on the Chicago market under the same conditions. I cannot remember the largest number of hogs I have sold in 1933 on any one day. I can handle more hogs arriving by rail than I can coming by truck. It would be hard to tell, but I would say 25 percent more any way.

The character of my operations in the solicitation of business, is to look up people who have stock to ship. If I am not already acquainted with them, I try to get acquainted with them and talk to them about the situation, [fol. 574] the business, and about their stock if they are feeders, and do everything I can to ingratiate myself into their good will and before I leave them I try to have them promise they will ship to William Gentlemen and Son.

I have not been on a soliciting trip for over a year. Prior to that time I took part of Nebraska and part of Dakota and a few places in Iowa. Some of the firm themselves take occasional trips out, but they do not do what I would call a general soliciting business. They go out to feed lots mostly within a radius of 150 miles and they have a very large acquaintance with people who live within 150 miles

of Chicago and they are constantly requested by many of these people to come out and see their stock and pass judgment on how it is doing and about when to market it and all that, and that covers most all of it. Someone in the firm makes such trips whenever requested. They do not get around to see all the customers of the firm. We don't make any distinction between the man who ships by rail and the man who ships by truck, so far as the business is concerned.

At the present time I think most of the soliciting is confined to truck business because it is the season for it and it is all nearby stuff that all comes in by truck, most of it within 100 to 150 miles of Chicago. It is just a seasonal arrangement. I make contacts and follow them up by writing letters. I use no other means. I do not find that particularly satisfactory. It does not give as good results as [fol. 575] it used to. I account for that because the reports go out from the stockyards here two or three times a day, giving the exact situation regarding the classes of livestock, that is the market for the classes of livestock and all of these people have radios, and they all know within a few minutes how the market is here exactly and they do not care about a letter that is a day or two or three days old, so far as the market conditions and prices are concerned. Prior to that time, they used to be glad to get the letters and the information contained in the letters, but not now.

Mr. Preston B. Unthank, a witness called by the government testified as follows:

Direct examination:

I reside at 6749 Ridgeland Avenue, Chicago, Illinois, and am a member of the firm of Adams, Corrick & Hatch, J. M. Corrick and Fred Hatch are my partners, and Mr. Adams is not in the business any more. I am hog salesman and the bookkeeper. We have four employees; Leo Keleher, a yardman who sells a few calves and steers; R. M. Blakemore, a yardman and also does our stenographic work, typewriting, and takes care of our lists, gets our circulars ready to go out; Henry Moon, I presume would be an employee. We handle his business on a commission basis; and Warren Grange is on the same basis as Mr. Moon. In the case of Mr. Moon and Mr. Grange

[fol. 576] their salary is based on their commissions. When we are busy they help us out a little. If Mr. Moon is away we sell his business for him, if he is here he sells it himself. We sell all of Mr. Grange's stuff. He is not a salesman. We charge Mr. Grange fifty percent of the commission as our compensation. The bond which we give protects the transactions of Mr. Grange and Mr. Moon. We get forty percent of the commissions on Mr. Moon's business, whether Mr. Moon sells his own livestock or not.

I came into this business in 1903. Was a yardman for two or three years, about two years in cattle, and when the cattle were yarded I went to the office, used a typewriter and took care of that class of work, and perhaps a year or two later, I was put in the hog alley as an alley-man and finally got to selling hogs; and I would judge that close to 25 years I have been a hog salesman. I sell all the hogs for my firm, except some that Mr. Moon may sell. I sell approximately 65 or 70 percent of hogs billed to our firm. I don't think there is much difference in selling traders' hogs and hogs from the country. These yard traders, you know, often times have hogs over. They will buy them too high and the next day perhaps they will want me to sell them for them or somebody else and they cost for example, we will say they cost 5 cents a pound and they do not want to take a loss, so they will tell me not to sell them for less than 5 cents. Well, I may work all day and [fol. 577] not sell them, so, perhaps there is just a little more work and trouble in handling those shipments than shipments direct from the country where you are not tied that way.

I am in the hog alley in the forenoon, sometimes I am done by ten or ten-thirty and occasionally I am not through until two or two-thirty but that is very rare when a man is not late, and after that I am in the office until I am done; and I have been there until midnight lots of times.

There is no difference in the amount of office work in handling the same number of head arriving by truck as arrive by rail if all are sold in one draft. As the usual proposition I do not find that a truck consignment is sold in one draft. It is most always sold in more than one draft.

So far as our business is concerned, I believe there are more plural ownerships in the truck business than in the rail business.

Insofar as our expenses are concerned, we economized about to the limit in 1932. We could not do much more to economize in 1933. We are watching pretty closely the Drovers Journal bill that we have, and I think we have cut that down considerably over last year, as far as we have thought advisable, and I think perhaps, we are doing a little less circular work than we did last year. Those are [fol. 578] the only two items I think of now. My personal opinion is that the reduction in sending out these circulars and market letters have not had any effect upon our business.

I do some personal soliciting. I have not been out at all this calendar year. I know I went out once over a week-end last year. I don't know whether I went out twice last year. Mr. Corrick, Mr. Hatch, Mr. Moon, Mr. Grage and Mr. Keleher do personal soliciting. I do not know whether there has been less solicit-ion in 1933 than in 1932, with reference to my firm. I think the reputation of our firm brings us more business than the circular work that we do. In the case of a double deck car of hogs, I think I would not have over four sorts in a single ownership; there could be seven or eight. I think there would be 100 buyers in our division; packer buyers, traders, order buyers, yard traders far outnumber the packer buyers and order buyers. When we go out into the yards we have the estimated receipts which are furnished us by the government, and the holdovers from the day before. We have the prices of the day before and with that information I would estimate the price I would want to sell hogs for on that day. We usually ask more than what we think the hogs will bring and if the first man we show the hogs to bids on them, the price that we have fixed in our mind is the price we think they will probably sell for. We don't usually sell them. [fol. 579] If we think hogs are worth $5.00 flat, I would ask ten to fifteen cents more than that. It has been more difficult to sell hogs during 1933 as compared to 1932. The market is different, the demand is lacking from the packers; the shipping demand is a lot less this year, and perhaps there were spots last year when it was no better than now. But as I can recall last year, it is a good deal harder to get satisfactory prices for the hogs. I think we work harder and work longer hours in 1933 than in 1932. I think I put more time in this year than I did last year on fewer hogs.

It is hard to say what are the factors that impose a limitation upon my ability to sell. Of course, the one thing that makes it hard to sell is the way the salesmen differ from the buyers on the value of the hogs, and we have less competition up there now than we ever had. We have days up there when the market will finish good, say today, and tomorrow's run will be light, and we naturally figure that they will be decent buyers today, but they will be slow to start, and when they do, they will want to buy hogs lower with no reason that we can figure. When the demand is good, it is a good market; what we call a fast market; and if the demand is bad, it is a slow market, draggy market. There is a market for everything that comes to the yards. Considering my experience, assuming that I had all the [fol. 580] hogs that I could handle in 1932, and assuming all other conditions exactly as I did find them, in my opinion, I could not have sold any more than I did sell. I think I am as good a salesman, hog salesman, as there is on these yards. I do not know whether I could sell as many hogs as any other salesman or not. My answer would be, I don't know.

Cross-examination:

Referring to Government Exhibit No. 15, Exhibit "C", firm No. 2, I am not shown as doing any selling. We made a profit in 1932. Referring to the same exhibit, schedule 2, owner 1 that represents my drawing account.

The witness was temporarily excused.

Mr. Martin J. Brennan, a witness called by the Government testified as follows:

I reside at 5643 South Wood Street in Chicago, Illinois, and am a bookkeeper for Stafford Bros., Live Stock Commission. I have been a bookkeeper for this concern for four years. Before that was yardman. Was yarding and weighing from 1921 to 1929. I have a bill clerk and one yard man that helps me with the office work. They help make up the bills.

S. B. Stafford is the sole owner of Stafford Bros. We have ten employees, William Otto, a butcher salesman; [fol. 581] W. M. Ward, a cattle salesman; Roberts Sarsfield,

yardman; James O'Brien, yardman; John Grant, hog salesman; L. H. Wagener, yardman; John Coleman, yardman; James Rodgers, yardman; Frank Marsch, sheep salesman; Emma Schmidt, stenographer; John Fitzgerald, bill clerk; M. J. Brennan, bookkeeper. Mr. Stafford sells cattle. Stafford Bros. also engages in what we sometimes call clearance operations, clearing other commission firms, we clear the business of W. E. Young & Co. We have filed a schedule of rates and charges for clearing services. We render different services for different parties whom we clear. In the case of W. E. Young & Co., a market agency which buys and sells livestock, we do selling for them; we do buying for them; we do all the office work, as well as all the yard work. We do not do any soliciting for them. We send out a small circular for him.

We clear Callahan Live Stock Commission Co. He sells his own hogs. Stafford Bros. sell his cattle and do the yarding on both cattle and hogs and handle all his book work. We also handle his advertising. We send out his circulars.

We clear the business of Alex Rinderle Company, which is a sole proprietorship. Stafford Bros. buy and sell his cattle and hogs. He has another party handling his sheep, [fol. 582] the business being run through our office. We do his bookkeeping. Rinderle has a sheep salesman who is paid by Rinderle. After the sheep salesman's commissions are deducted from Rinderle's gross sheep commissions, the difference is divided between Rinderle and Stafford Bros. on a fixed charge. John A. Havey sells Rinderle's sheep.

We clear the business of Clarence N. Ball. We have cleared his business for about three months. He has had no cattle or sheep. I would say that he would have six or eight cars of hogs in a month. We do Mr. Ball's advertising to the extent of sending out circulars and writing letters; sending out account sales. Remittances are made by Stafford's checks. With the exception of Alex Rinderle & Co. our bond covers the persons we clear. Rinderle has his own bond. We clear the business of an order buyer by the name of Broberg, as well as the business of the John A. Havey Live Stock Commission Co., who specializes in selling sheep. Mr. Stafford will handle all the bookkeeping for Havey; also handles the sending out of market letters or advertising matter. Makes remittances on behalf of Havey, sending out Stafford's checks in payment of the livestock.

In the case of G. G. Broberg we pay for his purchases, collect for the proceeds of the stock bought, and handle his books and records. He buys cattle and hogs on order. He [fol. 583] buys his own cattle and Henry Keiner buys the hogs. We also clear a trader by the name of Charles Eitel. Based upon my experience day in and day out, assuming that we had ten account sales to make out, from the time we actually start to work to make out these account sales, it would take us from eight to fifteen hours. To make out an account sales of a carlot belonging to a single owner, sold in one draft, one account sale would take from fifteen to thirty minutes. If the livestock came in by truck it would take from ten to twenty minutes. It would take about five minutes to make out an account purchase.

George H. Baker has a little business of his own, which is cleared by Stafford Bros. and is billed in Stafford Bros. name. He sells his own hogs and Stafford Bros. sells his cattle and Stafford Bros. make up his bills.

Cross-examination:

The processes in connection with office work are governed by the market, to a great extent; if the sales are made late in the day, it retards the work or the finishing time of our duties in the office. The office force and myself are pretty busy throughout the day on most days of the year with the exception of Saturdays and Sundays. Persons cleared by Stafford Bros. have to stand the expense of their country solicitation. Mr. Brennan was temporarily excused.

[fol. 584] Mr. L. Audrey Williams, a witness called by the government, testified as follows:

Direct examination:

My address is care of C. A. Kleman & Co., Exchange Building, Union Stock Yards. Am engaged in the order buying business and am an employee of C. A. Kleman & Co., purchasing agents, and have been since 1927. C. A. Kleman & Co. is a subsidiary of John Clay & Co. I was in the employ of Morris & Co., packers, as sorter and buyer in later years; with the firm of C. O. Robinson & Co., as salesman for about five years. I still sell C. O. Robinson's

sheep on a commission basis of about 37 per cent. That was after I left Morris & Co. I handled sheep exclusively while with Morris and with Robinson. I did very little buying for the Robinson firm. I do all the buying for C. A. Kleman. Mr. Kleman organized the buying business under the name of C. A. Kleman. He was at that time the sheep salesman for John Clay & Co. Our orders come from eastern independent killers. The orders are usually received each day; cannot be depended upon as a regular order from day to day, and you might receive an order one day which you would be unable to have fill- that day; that you could not carry over until the next day, and they are usually for killing classes of lambs or sheep, either solicited by wire early in the morning or by a telephone [fol. 585] call; often at the customer's suggestion we call up and find out what he wants for the day, which is done at the expense of C. A. Kleman. Our customers do not place standing orders that can be depended upon. We have orders occasionally for breeding stock, feeding stock, but the big portion is made up of killing classes of lambs or sheep. In the case of fat sheep, they are mostly fat ewes.

During the winter months I am usually in the office very near six o'clock in the morning, during the heaviest buying season, which is during the winter months.

The heaviest buying season starts in with a little spurt along the latter part of July on through August, and it will die down until along in October, and from October up until May the orders come in regularly.

Sometimes we have the orders early in the morning, or possibly the afternoon before, but in many cases with the smaller killers in the east, the market conditions regulate the placing of their orders a good deal more than it does with the bigger people, and it is often that we must wait to see the action of the market before we can receive a definite order for them. They may send their order to some order market. The customers will often ask for the opinion of the market, or the possible prospect of the purchase price of a certain class of lambs, which we communicate to [fol. 586] them either by telegraph or by telephone, and when the information is received by them they will tell us whether or not they have any orders to be filled. I usually use my judgment, although some of the small outfits

generally put a limit, depending upon the dressed market conditions. There are a very few of the smaller killers in the east who will often order a full deck of lambs to be shipped with a single deck of calves or hogs, but most of them order one or more double decks. My procedure in filling the order after I have received them is in locating the type of stock I want to fill the order, which means careful looking over of the available supply that happens to be on sale that day. I seldom find them sorted according to the way I want them. I buy them with a specified sort,—it all depends, of course, upon the kind of an order you have. Nearly all of the small killers in the east handle a different class of stock, some of them want them real good, some of them have a strictly kosher kill, and they will require a certain class of livestock.

If the livestock does not happen to be priced to someone else, the commission man will usually price them to me. We make all of our purchases from commission men. At various times we might need a few odd lots to make up car weights, which we would buy from traders on the [fol. 587] market. As the usual thing the commission firm prices the sheep first. In case the order is placed at a price, often the early indications are very misleading and you think you can fill it at the price, and maybe you cannot; or you think you cannot and maybe you can. Under ordinary circumstances it makes it easier to be able to use my own judgment as to price, there are times when the conditions of the market, the stipulated price really does not make any difference because it happens to be over the limit that lambs can be purchased for; in which case I will buy them for less than the price named in the order. In arriving at the market value or what I will pay for a lot of sheep, a lot depends upon the size of the run around the circuit, at the various markets; the general undertone or feeling that you get through your communication with your eastern customers, and generally the action of the packers, which, of course, at times is very misleading. It sometimes happens that the packers seem very anxious to buy stock or would lead you to think that they were early in the morning, and yet the market will work out lower.

It is hard to explain what is the nature of the activities of the packers that make it appear that they are very

anxious to buy. I just have to kind of sense it or feel it myself.

[fol. 588] I usually get out in the yards by seven thirty. Mornings when the orders are rather heavy, probably by seven o'clock. The market does not open at that time but I go around the sheep pens and look at the sheep. Other buyers are doing the same thing.

I never buy sheep for the purpose of filling an order before I have actually received the order. I only buy for the orders actually in hand. I usually try to fill orders as promptly as possible, but market conditions often delay the purchase until a very late hour. It depends upon the supply available, whether the order buyers are more active on the market in the early part of the day than the packer buyers and other buyers. It is not often the case that I will purchase the first lot I get into; market conditions in recent years make it rather a long, drawn out session. We might have bought them prior to 1 or 2 o'clock if the orders are not too heavy, but it is often close to 6 before we can get them together and get them sent to the chutes. We try to get them out before five o'clock. There is a demand for western ewes as breeding ewes, from any place east of here, including Illinois, Wisconsin, occasionally. When I get an order for feeding lambs the order specifies the weight and quality. The bulk of feeder orders received on the Chicago market that we come in contact with and know usually run from 55 to 60 pounds. Then, there are other [fol. 589] types of feeders that want lambs weighting 65 pounds, and those people in New York want lambs weighing down around the 45 to 50 pound mark. Some feeders want lambs fatter or thinner than others because of different methods of feeding. Whether we are able to fill orders of that kind depends upon the supply. Occasionally when a load can be bought where they look worth the money, they can be bought out of second hands to good advantage.

The breeding ewe order is a tough proposition, because it usually calls for a carload of a certain age, either a carload of yearlings or a carload of yearlings and twos or a carload of twos and threes, mentioning ages; each animal must be mouthed and inspected for general health conditions, as well as you can determine. I physically handle every animal in the consignment. I do not necessarily handle every fat lamb individually. If a commission firm

has 250 fat lambs in a pen and I have an order for lambs of that general character, I determine whether those lambs are satisfactory for that order by handling the lambs with my hands on their backs and on the loin. I think I can usually tell the weight by looking at the lamb. There are rare cases where buyers or salesmen get away off on their judgment of weights. I would say that in a load of lambs where you would handle some lambs that lacked a little (flesh), you would naturally handle them 100 per cent [fol. 590] longer and oftener than you would when you walked in and handled probably 20 or 25 lambs and did not hit a bad one. If I found the first few were good, I would not handle so many, but if I found them a little poor, I might handle a great many. The trained eye does not enable me to measure satisfactorily the condition of the lamb nearly so well as my hands. That is caused by the presence of the wool on the sheep's back. We buy more wool lambs than we do clipped lambs. A good many of our eastern customers run their own wool pullers and naturally want wool skins to work on, although there are periods of the year when they cannot be secured and they must take clipped lambs. Whether or not it would be difficult to buy would depend upon the amount of orders you had and the number of lambs suitable to the orders that you would find in any one alley. It might make it a whole lot easier to operate if you were in a position to buy 8 or 9 or 10 cars of lambs from one man, if you had orders that day for that amount than it would to go in and pick one or two loads of lambs and buy one or two loads of lambs out of an alley of 10 or 12. By having the supply distributed among many salesmen it would be harder to get as many bought, not that it would affect the price to amount to anything. Sheep and lambs that I buy are weighed to C. A. Kleman. After buying the lambs they must be looked over for any possible sort and weighed probably in various lots, car weights [fol. 591] or counts which I usually do. Of the purchases that I make the only thing I would have left over would be a small lot which would consist of a number of animals that would cause it to be too much weight in the car, that would be all, not because they were not desirable. In such a case as having too many to put in a car, I usually make arrangements for some one else to take them before they are weighed to C. A. Kleman & Co. In shipping lambs

from the market we make up a shipping order delivering these sheep to the railroads on whatever road they happen to be going out, stated as to who is to receive them in the east, and accompany this order with a delivery order, and the yard company delivers that car of sheep or cars of sheep to the loading chutes to be loaded into the railroad cars, and these shipments, of course, are checked out of the sheep house by us as they are being counted out, because often on a big day's shipment, it is confusing. There are a lot of counts alike and a lot of chute numbers that sound alike. After we have given the shipping order to the yard company, the sheep leave our custody and are in the possession of the stockyards company who actually does the physical loading into the cars.

The work of sorting sheep as to whether they are made bofore or after purchase, all depends upon the class of stock that is being handled. At various times of the year [fol. 592] there are several sorts must be made of each load before they can be shown because they contain several classes of each age, that one age would interest one buyer and might not interest another buyer. This happens with native shipments that would have native spring lambs, clipped lambs, or so called yearlings now, old sheep that would be fat and thin, and each one of these classes would have to be sorted off by themselves because the man that might went to buy the spring lambs might not want to buy the clipped lambs, and the man that buys the ewes would not want any of the other lot. They must be segregated. Western shipments often come down in mixed ages and they must be sorted. The actual weighing begins depending on market conditions. Often it will start early in the morning. It might not take place until noon. In most instances order buyers usually buy first.

If sheep are available on the Chicago market, as to the limitation of the number of orders which I can fill in a day's time, it would just all depend upon how many lambs you can get to and get bought. It would be almost impossible to say definitely how many you could get bought any one day because the market conditions make each day's trading so different. Some days it is easy to buy and we will have a dozen loads and the next day you work your head off to [fol. 593] get a single deck bought. It is [redacted] experience that conditions vary from day to day, almost from hour to

hour. I try to evaluate those changes and meet changing conditions. If I did not, I would not stay on the market very long. Taking conditions as they exist on the Chicago market, as to the number of head I could buy in a year's time, it would call for just about the same kind of an answer which I just made. You could let your imagination run loose and just give any amount. Whether the Chicago market could absorb more sheep if it received them, I would not want to answer definitely, but I have seen it absorb a whole lot more than we are getting now.

Our orders are distributed throughout the week from Monday to Friday inclusive, and once in a while on Saturday we have an order. Usually Thursday is now the slow day of the week, so far as orders go, on account of the shortening of the running time on the railroads from here east.

As to whether I think I could have filled more orders during the year 1932, if I had had them, I really don't believe I could answer that question definitely, because there are days that it is real easy to buy them it seems, and then there are other days it is hard work to know whether you are going to get your orders filled or not, and [fol. 594] you often go short. I have never turned down an order because I had too many to buy.

My chief expenditure in getting business is for telephone and telegraph bills which are incurred almost entirely for the purpose of getting orders and advising of purchases. With reference to spending money for telephone or telegraph calls to try to get an order, in reply to an early marketing wire, giving the prospects what is on sale, they are liable to wire us and ask us if we think we could fill an order for them, and we naturally have to spend the cost of the telephone call or wire to give them a reply. I won't say that I have ever been completely shut out, but very near it. If we have the orders, we aim to get our share of them. If a customer or former customer has been slow pay on previous orders I would refuse the order. That does not happen very often but there is quite a bit at stake.

I could not answer definitely as to the largest number of carloads that I purchased on any one day in the year 1933.

I really do not know if I could buy as many sheep as any other buyer on the market. Our eastern clientele is not a constant factor, the same buying from me from week to

week or from month to month throughout the year. Dur-
[fol. 595] ing different periods of the year they do. At this time they do not. They are securing their lambs at other markets. It would be almost impossible to forecast at the beginning of a year as to about what our highest business is going to be as far as the number of orders I will get. One year's experience in this business is not a criterion of the year that is to come. I have not the slightest idea of what to look forward to in the line of the action of the market, the number of orders, as conditions all over the country tend to cause the orders to fluctuate one way or the other here. It is not necessarily harder to sell sheep than it is to buy them. It is about a stand-off, I would think. The salesman would have to prepare his stuff in order to get it in the position to be sold that the buyer would not have to do. All the buyer would be interested in would be buying them where the salesman would be getting them ready to be sold which would take several more operations. If I had an order to be filled where I had plenty of latitude with reference to prices, meaning, by that, that the price limitation was not great, and I were able to go out into the market and feel free that I exceed the price of sheep being made by other buyers, in that situation, it would be easier to buy sheep than it would be to sell them. The market conditions really have a tendency to make it easier to buy or to sell. I would not want to say that any one buyer could buy more than any salesman could sell, or
[fol. 596] any salesman could sell more than any buyer could buy.

The witness was temporarily excused.

FRANK MARSCH, a witness called by the Government, testified as follows:

Direct examination:

My name is Frank Marsch and I live at 8041 S. Elizabeth Street, Chicago, Illinois. I am at present a sheep salesman for a lot of different firms and individual men that clear through the firms, some firms have eight or ten men, they will handle their stuff. I do not sell anything but sheep. I do not sell for whoever wants to employ me for

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that particular day. I have regular firms and the people who come in there *to* do their business through these firms. I sometimes buy sheep on order but that is the unusual thing. Some months I might buy two or three loads. My buying business would be less than five per cent of the total business done. I have been at the stockyards since I was nine years of age and have been selling sheep for twenty years. I was employed first by the Western Union Telegraph Company and then I went to work for Morris & Co. I worked three years for the Western Union and worked for Morris running an elevator and finally drifted [fol. 597] into the sheep house in 1893. Was a driver from the scale. I did that for a few years. Twenty years ago I went to work for a man by the name of Scottie Mitchell. He was handling his stuff and I was working for him and selling extra and he got killed and I got the situation of selling sheep. He was handling and selling as I do now. I have been doing this kind of work for about fifteen years. During the four years previous I was sorting stuff and selling the odds and ends for Mitchell. I have two employees. My name is on all the bill heads of the firms I work for, Northwestern Live Stock, Stafford, Swiney. I have no letterheads. I mean my name is on the firm's letterhead for whom I sell. I do not have an office force. The names of my two employees are Edward Marsch, my son and John Sheehey, my son-in-law. My son has been with me going on three years and my son-in-law has been with me for about ten. Edward Marsch sorts up the stuff as it comes in and feeds and waters it, and weighs it when I get it sold. Mr. Sheehey does the same. I am the only salesman. I sell for Northwestern; Stafford; Swiney; Adams, Corrick and Lewis; Patterson Bros., and Strader Bros. also Walters Bros. and Schroeder Commission. In odd lots I get ten cents a head for selling and we make the same charge for each firm. Odd lots up to sixty head, ten cents per head, [fol. 598] and after that it is $6.00 a car, but there are very few cars we get. We sell for ten or a dozen individuals that clear their business. We make the same charge to them. All I do for the firms I work for is actually sell the sheep and fill a few orders I get to buy odd heads. The sheep are never sorted when delivered to us; we do our own sorting. I have an alley and the sheep are driven to

the yards. I think that would be the only difference, except possibly the attitude of the buyer. As to the attitude of the buyers toward trucked stuff and carlots and carlots arrival, it depends upon the individual. Some have told me they would rather buy truck stuff; some have said they would rather buy them off the cars. I believe it would be fifty-fifty. A good many things enter into that, Mr. Miles. The distance the stuff has been trucked, the way they look, and everything else. So many things enter into it; it is pretty hard to answer that question straight out.

Redirect examination (continued):

I stated on cross-examination that the operations of our firms differ—that is, we operate under different conditions than the other concerns. We have our other connections. As I explained before, we have our other firms at our other markets to influence business to us. We also have our loan-[fol. 781] ing business that influences business to us. I do not believe that other firms on the Chicago market do the same thing—that is, no other firm that does the same thing that I know of. There might be possibly some firms on the Chicago Yards that negotiate loans and assist in negotiating loans on livestock. I don't have any knowledge of any. As to whether I have told you all the different conditions that, in my mind, affect the operations of Clay and make them different from the operations of other market agencies—as I said before, our firms at the other markets will accommodate their shippers by doing a good many different things for people in their various territories, and on account of that we have business sent to us that we would not ordinarily receive. I believe the fact that we purchase stuff on other markets for customers also brings stuff to us here. I do not think there is any other firm that is just exactly like our firm.

It is possible that there might be one, or two, or three firms that may have connections at one other market. We have connections at, I think, eight of the other markets—eight or nine. I could not say for sure whether there actually are other firms on the Chicago markets having connections at other stockyards. I do not know how many carloads either of cattle or all kinds of livestock that is shipped to us at Chicago Yards from other John Clay houses. I could not give you exact figures. There have been weeks when half

of our business has been handled at some other point and [fol. 782] forwarded on here. On some of this forwarded business, we have to do the same work on such shipments as we do on the original producer's shipments; and some of them have been sorted and handled in such a way that we do not have quite as much work on them. It would be impossible to approximate the percentage. When going out to sell cattle, generally, our salesmen in the different departments agree amongst themselves what they will ask for them. There is no higher officer who does direct our asking price. I know that there are other houses of John Clay & Co. besides St. Paul that loses money. The losses are incurred in the commission business. I am positive of that. Working with the headquarters of John Clay & Co., I know their business and I know I am pretty familiar with their losses and their profits. St. Paul, Ogden, Utah, Ft. Worth, Sioux City, Omaha and St. Louis houses of John Clay & Co. have lost money this year. Sioux City is an old house. I think Omaha shows a big loss this year. St. Louis, I think, has shown a loss since our commissions have been cut.

Let me make this clear to you that our losses in our loan business are not shown in our commission business—neither do any of the partners draw any salary out of any of the houses. If there is any profit at the end of the year, they get it. The loss that I have mentioned at the different houses have occurred only in the commission business and not in the loan business. Assuming that a market agency on these yards received and sold but 500 cars of cattle per year—no hogs or sheep—should the rate be high enough to [fol. 783] pay the owner of that business the same salary that I am getting, in addition, of course, to his actual operating expenses? If you put the question like that to a business firm, regarding the cost of anything, you know it takes time to figure those things out. I am not so smart that I could give you those answers right out of the air in a second; it takes a long time to figure out these things. But I can answer it if you will give me proper time to analyze it and figure it out. I don't feel that anyone wants or should have $75 a car for selling cattle. I don't think anybody wants that rate. We try to be fair, I think, in our rates.

MR. WILLIAM C. YOUNG, a witness called by the Government, testified as follows:

I reside at 8514 South Elizabeth Avenue, Chicago. I am a yardman in the hog alley of the National Livestock Commission Company, Union Stock Yards, Chicago.

I have been employed by the National Livestock Commission Co. around twenty or twenty-five years, and during that time have been a yardman. I have not been employed as a yardman by any other firm in these yards. My experience before coming here was tin smith helper and I also worked for the Postoffice as special delivery clerk. I started out with the National Live Stock Commission Company yarding stock, helping in the alleys, and so on. It depends [fol. 784] on how much business there was in the hog alley. On slack days, we always help a little in the cattle alley and sheep house—that is, when it is light in my end and they are busy down there. I run the alley—that is, I yard and run the alley, take care of watering the stock and help sort with the salesmen and weigh it, keep track of the different owners, and feed and water. Our firm has pens in the Rock Island Division and the Northwestern Division. I am the only hog yardman in the Rock Island Division for our firm. They have two yardmen in the other divisions. They have more yardmen in the other division because they get more trucks over there. We have rail receipts in our division as well as trucks; it depends on where they unload.

I usually get down in the morning around, maybe, a quarter to six—five forty-five to six o'clock. Then I go down to the chutes and the stuff that is consigned to the National Live Stock, or hogs, my part of the alley, I take them up and yard them, water them, feed them, and then I go back and get some more and go down and bring them up, and do the same thing; and around nine o'clock or so, we have got the hogs all sorted, watered and fed and go down and get my stuff, if I have any stuff that is sold, and weigh what we have sold, come back around the alley and if the hogs need any more corn or feed, I also feed them again; also change the water; and if the hogs are warm, in this kind of weather, wet them down and keep them in good condition.

[fol. 785] The Stockyards Company feeds the hogs. I put the order in to see they are fed—to see they get the number of bushels of corn that I put the feed card in for. The Stockyards Company announces the arrival of hogs from the

Bulletin Office. Sometimes we get a letter or a tally sheet advising us of the prospective arrival of shipments the following day. If the hogs are in and the Yard Company calls them to us, we go and get them and drive them to the pens—unless they are yarded during the night, and then, of course, they yard them and we get them in the morning. If I receive notice that we have several carloads of hogs each belonging to a different owner, arriving on the same train, unloaded at the same docks, I would take each carload separately, and sometimes if the other men are not busy down there, they would give me a hand, and I also give them a hand when they are busy. I mean by the other men, the other yardmen. As to handling plural ownership hogs arriving by train, and as to any difference in handling them and single ownership, sometimes we get word on it to weigh them separately—different owners, for instance four or five different owners of hogs in there. They would give you the number of head and probably no weight, and you would have to grade the hogs for ownership and also weigh them for owners. In the case of plural ownership, we sort them up into individual owners, feed them separately, and also water them that way. Cooperative loads, of course, they are sold sometimes together, and then weighed separately—that is on the owner's request. Stockyards Company men notify us of the arrival of truck hogs by putting a slip in a [fol. 786] box for that purpose. The truckmen do the unloading. They put them in the pens and notify us. The pens are near the unloading docks. In the case of truck consignments of hogs, if the truckman has different owners' hogs separated, and unloads them separately, we keep them separately, but if they are unloaded altogether, we take them up to the alley and re-sort them. By "up to the alley", I mean where our sales pens are located. Sometimes hogs are sorted before they are fed and watered, and sometimes afterwards. Hogs arrive by rail at all times of the day. Weather conditions have a lot to do with time of arrival by rail. Say Monday, I should imagine most of them arrive between two o'clock in the morning until nine, ten or eleven o'clock. Truck arrivals come in at all hours. The salesmen sort them, and I help the salesmen sort in the morning—these sows and stags and bust pigs and so on—and undesirable hogs. I am familiar with the different classes and grades of hogs. I usually wait until the salesmen come out

before sorting. There is some sorting done after the buyer makes the purchase. Sometimes the hogs that are in the pens are not fat enough or too big, or not just right in quality. I do not assist salesmen for my firms in selling the hogs. I do not show hogs to buyers. The salesmen usually tells me when he has consummated a sale. I look after the weighing or the hogs. As soon as the salesman notified me that he has sold a pen of hogs, I do not immediately take those hogs out and drive them to the scales. I go up to the s-ale and find out if I can get those hogs weighed, and sometimes maybe I have to wait an hour or two to get them [fol. 787] weighed. I get the information as to when they can be weighed from the man at the scales, giving the firms the different turns. They give each man a turn—the first man that comes up there usually gets the first turn. They usually weigh eight drafts, which used to consist of a turn on the big scale. What they call the dinky scale is a small scale and they usually let you weigh a half an hour or so. Sometimes I drive the hogs to the scales myself and sometimes I don't. When I call the turn, he just tells me then to let them come, and I get behind them and chase them out of the pens and let them on the scale. If we are real busy, I have another man to help me. The salesmen assist once in a while. Personally, I do not have to do any sorting before I put them on the scales. The buyer usually does that. Yes, on the dinky stuff, I usually do that too for the different owners—you know what I mean. In working at the dinky scales, we take the hogs that are sorted out from the big load—the off stuff—take it down to the scale, and maybe one packer is sold to one man, and another ten pigs sold to another, and another stag sold to another man—we take them down there and weigh them to each man who gets the hogs, and also if there are two hogs of different marks, they have to be weighed separately. We weigh them separately and mark them on the tickets.

Sometimes we have a dozen, of course, and they are all in different loads. They may have several lots like that [fol. 788] on different loads—different owners. You sort off these hogs from the main load—that is, the big load—maybe 8 or 10—and they would probably be sold, maybe, to four or five different buyers; and then we take them down there and weigh them to the different buyers—whether this man get- a stag, this one gets a sow, or this one a thin pig—

and weigh them also for marks. If there is apt to be three different pigs in there with different marks, we weigh them separately for the marks and put them on the check and he gets them and maybe the next bunch another shipment the same way. I get the information in regard to that from the salesman. I make a memorandum. I drive them or put them on the scales. After the hogs are weighed, I go back to the alley and see if there are any more sold, and see if the water is on the hogs. After the hogs are weighed, the Stockyards Company takes care of them. I pick up the scale tickets as soon as the hogs are weighed. I mark the different owners—the different marks on the hogs. I then give the scale ticket to the salesman. Our firm has not received a good many double decks of hogs lately. I have handled them and do handle some. Sometimes the work is different in handling a double deck than a single deck. Sometimes they are graded that way—one end might be all of what we call packers or sows and another end will be all good butcher hogs. In a case of that kind, we drive the deck separately to the pens, if they are graded that way. If the owner is there and says it is all right to throw them together, we take his advice.

[fol. 789] I manage to drive a carload of hogs alone. We have to take a lead on the hogs and see that the gates are all fixed—take a lead of about a block or two, or a half a block—and cut down the hogs, and then have to hook the gate behind the hogs, and take another lead, and so on until we get them to the alley.

It is hard to tell how long it takes to drive a car of hogs on a real busy day. Sometimes I have yarded a load of hogs in five or ten minutes, and sometimes it takes an hour and a half to yard them. The difference is caused by unloading conditions and other conditions. Other livestock may be in the way, trying to get up to the alleys. There are several ways I can get to our pens. I determine the way by the conditions at the Yards. It is difficult to tell which may be the better. You have to use your own judgment. It is different—different ways. Sometimes some stuff is loaded on and then there is also direct hogs and other conditions that tie you up. We use our own judgment as to the best way to save time.

We weigh our cripples to Brennan and Allen and they take care of them. Lots of times we yard them out of the

chutes into a catch pen, and then, of course, we put in an order to have them taken away—that is, a cripple order. Then a cart comes around and takes them away.

[fol. 790] If a hog is unloaded crippled from a car, and the hog can walk, we use our judgment. If he can walk and we can get him up the alley to help the shipper out to get more money, we do that for them; but if the hog is not able to walk, we have to just send it out. If a hog becomes crippled while we are driving it up the alley, and is unable to travel under its own power, we have to send him out also. We put him in a pen. There are always pens along the way that we just drop them off in and put them in there. We have to get a key man to drop that lock on that pen and then he locks it up until we put in that order. The Stockyards Company maintains a special scale for weighing cripples. I do not have anything to do with the weighing of cripples myself.

On hot days, the hogs come in pretty warm, and you have to wet them down a little bit and cool them off—give them plenty of water, see that the water is always running in the trough; and sometimes we wet the whole pen down with the hogs to keep them from getting overheated.

As to how late we have to stay to get hogs weighed, it depends on how many firms are ahead of you—also market conditions—how they sell them. Sometimes it takes them all day to sell the hogs; and sometimes they do not sell them that day. When they are late in selling them, that means that I will be late in getting them weighed.

[fol. 791] We get a turn at the scales where we weigh, sometimes, two or three times a day. In our alley we have access to only the big scale and what they call the dinky scale. There are several other firms that weigh there. I couldn't tell exactly how many. I imagine eight or nine firms; I recall the Producers, the Farmers' Union, Kuenster, Holloway & Ogren, Sarsfield, C. Pritchard and Dunning.

I work in the office putting up circulars and stamping them, and also helping with the daily sheets—that is, the salesmen; helping with the daily sheets to see that the owners get their right hogs, according to marks, and so on. I do not assist in making out the account sales. It is part of my regular duty to help in the office the way I have explained. I aim to do that every day.

As to the difference between yarding rail and truck hogs, that just depends on where they are located. The truck hogs are not all unloaded at one place. There are different unloading docks. Sometimes it may take you five or ten minutes—sometimes it may take forty-five or fifty minutes. That is due to congestion mostly. In either case, we have to drive the hogs up the ramps to the second floor. The method for handling crippled hogs arriving by truck is the same as crippled hogs arriving by rail. If the shipper sends hogs in more than one truck, we do not drive them all at once. Sometimes the other truck don't get in for two or three hours after. If the shipper tells us we may yard them together, and they have been unloaded at about the same time, we being them to the alley together. The way [fol. 792] we handle them may depend upon the instructions we get from the shipper.

Our firm employs three yardmen in the hog alley who are regular employees. We usually yard all the hogs consigned to our firm. Sometimes the cattle men are not doing much and if they are not busy they will help us. If the reverse is true, we will help them. We never did hire special drivers.

WILLIAM F. O'MEARA, a witness called by the Government, testified as follows:

Direct examination:

I live at 7821 South Winchester Avenue, in Chicago. I am a calf salesman for Lawler Bros. & Co., at the Union Stock Yards and have been for three and one-half years. I am the only calf salesman. I am considered the calf salesman for the firm, but the boss also assists me once in a while. That was the situation in 1931, 1932 and this part of 1933.

I started in as a stenographer for W. W. Wilson & Co., a market agency at the Chicago Stock Yards, some fifteen or sixteen years ago. I was there for possibly a year, and then went to work for Conklin Bros. I did some inside and some outside and some office work. By outside work I mean as a yardman. I was with Conklin Bros. for a year or a year and a-half. Then I went to work for Pritchard—worked for [fol. 793] them something less than a year as an outside

and inside man; left the yards for a few months and came back and worked for Lawler Bros. That was possibly thirteen years ago and have been with them ever since. I went to work as an office clerk in the Fall of the year and the next Summer I went outside as a yardman in the hog alley. I suppose I was in the hog alley as a yardman for some five years. Then started to sell hogs—acted as a hog salesman for two or three years; and then they transferred me to the calf alley. I have remained there ever since. I was taken to the calf alley to be broken in as a calf salesman. I am still breaking in as a calf salesman. Any information I still want I get from the boss. He will assist me as to the value of the calves at different times if I am undecided. I refer to E. J. Lawler as the boss. Our calves come mostly by rail,—from the States of Wisconsin, Illinois, Iowa and Indiana. They may come in either single or double deck cars. The number of calves arriving in single deck cars vary according to the weight. The heaviest weight that we class as a calf is 300 pounds. We get very few weighing 300 pounds. Most of our calves run to the light veal class. There are possibly 70 or 80 300-pound calves to a single deck.

Light veal calves will average somewhere in the neighborhood of 120 head to a single deck, and double that number for a double deck. We have no range calves from the Far West. Practically all our receipts are from nearby terri- [fol. 794] tory, and will be classed as veal calves. There are bobs. Then the others are classified according to weights. They have no names as to classification except lights, good and choice. Light calves weigh around 100 pounds; good calves from 100 to 200 pounds; choice possibly from 140 to 200 pounds, or a little bit over. A choice calf would hardly weigh as much as 300 pounds. A calf that weighs over 200 pounds at this particular time of the year would not be called a choice calf so far as price is concerned. We would call it a heavy calf—a strong weight. We call shippers good weight vealers that are able to stand the trip East. They would weigh anywhere from 150 to 250 pounds. Bobs weigh from 50 to 90 pounds. It is very hard to sell bobs alone and especially if they are out of a load of calves—if the same buyer does not buy them. If they come alone, you will have to get somebody to buy them, but if they are taken out of a load, the party that usually buys the load usually buys the

outs and the bobs. If they come alone, we have to get a buyer the same way as we would for any class of calves. We might get an ordinary packer—small packer—or big packer—or some butcher to buy them; by butcher I mean a small city butcher.

Order buyers generally buy the shippers. The little packers generally go more for the good and choice calves, but the big packers also like to have their share of good and choice if they are buying the light weight calves from them. Generally our buyers are the packers—order buyers [fol. 795] or city butchers. I do not know of a calf speculator in the yards.

There has been no change since I went with Lawler Bros., with which I am familiar, with reference to the territory from which I receive calves.

I get to the Stockyards around six o'clock in the morning. Upon my arrival, I change my clothes, go out to the alley, turn on the water in the calf pens. As stock comes off the dock, it is sorted—the calves are sorted off the cattle and put in the calf pens—and I help sort and water it until such time as I either have to look for buyers or buyers are around. If there are a lot of calves on the dock, I go up there and drive them down. We have certain pens that are assigned to us; and certain pens that are assigned, are set aside for the purpose of handling calves only. These pens are about three-quarters of a mile from the unloading docks. The calves are driven to our pens by our yard boys. Occasionally I drive them off the docks only. I don't do all the sorting of the calves. A yardman by the name of Joe Nolan assists as a yardman. We seldom select calves to begin with. We do not sort cooperative loads of calves unless we have instructions so to do. From now on, until some time around next February, we will get very few loads of calves, but starting sometime in February until about this time, we get numerous loads—a number of straight loads of calves. From this time until February they would come mixed with cattle. Once in a while we get straight loads of calves. The number of calves [fol. 796] arriving in a carload with cattle would be one head up to a straight carload itself.

If twenty calves arrive in one car mixed with cattle, we would put the twenty calves in one pen, whether owned by one person or several different owners. If we have home

weights, they would be weighed together, if sold in one lot. If we didn't have home weights, but just had marks, we would have to weigh each mark separately. Our calf pens are Division D, Blocks 15 and 16. Often calves come mixed with steers. Calves generally come mixed with what is classed as butcher stuff.

You can, at times, get more than one packer buyer to look at your calves from the same packing house, but, as a general rule, there is one buyer usually takes in a division. Generally you will find two buyers from the same packer in the same division buying calves.

No doubt, if there had been more calves at the Chicago Yards, they could have been handled,—that is, sold.

When I go out in the yards in the morning prepared to sell calves, I have in mind a price I will ask for the various grades. I arrive at that price in my own mind from supply and demand—higher or lower. If the supply is very light around the yards, and I think the demand will be good, naturally I would ask higher prices. Before I go out to sell in the morning, I get the information in respect to [fol: 797] receipts of the entire Yards. As to the demand, just the knowledge that you have of the packers being in the market and buyers asking you for calves, is helpful. We submit a price to the buyer that is based upon the information that I have already procured. A few of our consignments come by trucks. I don't know why there should be any difference in selling calves that arrive by rail than selling those that arrive by truck. My answer is there is no difference. When calves arrive by truck, they are some times delivered to our pens by the trucker. The tail gate of the truck is dropped and the calves run off. The market on calves was lower for 1933 than in 1932. I have not held over any calves unless they came in real late in the day. It would take longer to sell calves this year than in 1932. On lower markets, sometimes it takes longer to sell stock than on a high market. That would be the only difference between the two years—that it would take a longer time each day.

I do not know the greatest number of calves that I have sold any one day for 1933,—not exactly. Approximating it, I would say going up toward 1500—close to 1500. It would be between February and June—perhaps between the latter part of March or the first part of May. I expect E. J.

Lawler sold some of them. I would say he did sell some of them rather than say he did not sell them. He is always there. I say that I do not know, but am inclined to think he did sell some of the calves on the day the 1500 were sold.

[fol. 798] "Mr. Miles: But did he come in and sell because of the larger number that you had?

Objection by Mr. O'Bryan.

The Examiner: Mr. O'Meara, we don't want you to testify to anything that you don't know or express any opinion on any matter unless you have some definite opinion. All I am interested in is getting the facts. Can you recall the circumstances enough to answer the question intelligently, or can you not?

The Witness: No."

The objections of counsel do not bother me.

There is hardly any day that E. J. Lawler does not do some actual selling, excepting Friday. I would say that he sells a small part of the calf receipts.

In my opinion I could have sold more calves in the year 1932 if I had had them to sell.

"Q. In your opinion, how many calves could you have sold in the year 1932, assuming that you had them to sell, taking conditions just as you found them and taking the calves just as they came to you.

Mr. Boyd: May I ask a question as the basis for an objection?

Mr. Miles: Most certainly.

Mr. Boyd: Do you know how many calves you sold in 1932?

The Witness: No, sir.

Mr. Boyd: Do you know how many calves you sold on one hundred market days in 1932?

The Witness: No, sir.

[fol. 799] Mr. Boyd: Do you know how many calves you sold on any market day of 1932?

The Witness: Not the exact number, no.

Mr. Boyd: Than I object to the question for the reason that the witness is not qualified to answer it and the statement that he does not know how many he sold on any par-

ticular day would disqualify him as to how many he could sell on any of those days.

The Examiner: Objection overruled. Read the question.

(Whereupon the question was read.)

The Witness: I don't know.

Mr. Miles (continuing): Do you believe that you could have sold 25% more than you actually did sell.

Mr. Boyd: The same objection. The witness has answered.

Mr. O'Bryan: Further objection. The witness has given the complete answer and Government counsel is now trying to argue with the witness.

Mr. Miles: No argument. Take the ruling.

The Examiner: Objection overruled.

The Witness: What was the question? Could I sell 25% more?

The Examiner: Yes, sir.

The Witness: No.

Mr. Miles: What percent more do you believe you could have sold, if you had them to sell?

Mr. Boyd: Now, I object to it for the reason that the witness said he could not tell how many he could sell, and he could not figure a percentage on an unknown number.

Mr. O'Bryan: Same objection to all this line of questioning. It is improper.

[fol. 800] The Examiner: What have you to say on that, Mr. Miles?

Mr. Miles: Mr. Examiner, I am not going to engage in colloquies and arguments.

Mr. Boyd: I object to the statement.

Mr. Miles: Apparently Mr. Boyd contends that because the witness cannot deal in specific numbers that he could not even approximate in percentage. I am not going to fill this record with argument in regard to matters that are so clear cut, so perfectly proper, that an objection to them can only serve but one purpose.

Mr. Boyd: I don't feel that the attorneys for the Respondents were any more voluminous per question asked by Government counsel, and I think that the effect of the statement of the Government counsel would indicate that I am charged with the responsibility of filling the record

with more objections or more lengthy statements than he is, and I must protest against such.

Mr. Miles: I am making no such charge, sir, I am merely pointing out to you that I am making a resolution.

Mr. Boyd: Which you will probably violate when I ask a question you don't like.

Mr. Miles: Take the ruling.

The Examiner: Objection overruled. Read the question.

(Whereupon the question was read.)

The Witness: I really don't know.

[fol. 801] I do soliciting in the country. Last year I believe I had 62 days in the country. Generally, I go out Thursday and remain until Monday night. I believe they—"The Exchange"—include Saturdays and Sundays.

I do not sell any class of livestock except calves, except if the bull man is on his vacation—or the bull man is off a day.

When on soliciting trips, I solicit business from farmer shippers. If I go out to the country and hear of a man that has stock ready to ship, I go to see him if he is close by. I do not receive requests to go out to certain farmers—not many. I don't know as to what our company has in the way of such request. How I determine the route I would take, or the destination, or where I would go, is wherever I am sent. Someone in the organization tells me what certain territory to go to.

I make appraisals; if a shipper had a number of calves they are usually shipped the day they are taken in. There are not any shippers that have loads of calves. Cooperatives ship entire loads of calves. The party might have his calves in the yards that day ready to ship, and he might ask you what you think the calves would bring. That would be on the following day.

[fol. 802] Sometimes I know that the same people have been solicited by other concerns, and in some cases I do not know. If I do know they have been solicited by other concerns, I will solicit their business just the same. I solicit all the classes of livestock that the firm handles. If asked, I will give a man an opinion as to what I think his cattle would be worth on the Chicago Yards—same as the calves. I could not give him a very good opinion about hogs, but

I would attempt to advise him to the best of my ability with reference to any kind of livestock, and try to induce him to ship to our own particular concern at the Stockyards.

My soliciting trips are made by automobile. I use my own machine.

F. O'MEARA was recalled for continuation of direct examination:

When I was on the stand yesterday, I mentioned that Mr. E. J. Lawler, who is really the owner of the company, assists me in selling calves. He is actually a steer salesman. His duties are both steers and calves. He is an old-time calf salesman, originally, and, as I understand it, after going into business himself, he never did get away from the calves while he did work in the steers. There are three steer salesmen with Mr. Lawler—counting Mr. Lawler.

[fol. 803] There are four men working in the steer alley that have memberships—one more or less runs the alley, and, on an odd occasion, might sell a few steers. I cannot say that Mr. Lawler sells very few calves; some days he will sell more than others; and some days he doesn't sell any at all. I believe it is true that I will sell more calves than he on any day that we are both on the yards.

The reason I say I solicited 62 days is that we have to register out when we go soliciting, and register when we come back in, and I believe that they count—that the days you are actually out, whether they are Sundays or Mondays, go in on your time. I am positive of that.

Packer buyers will buy the bulk of our calves. Armour, Seift and Wilson are the major buyers that buy the majority of our calves. I sell the most of our calves to Armour & Co. The Armour buyer is on the yards nearly every day—possibly every day—looking around for calves. Assuming there was a carload of what might be called butcher stuff coming to the Yards, and there were two calves in that car, the calves would not be yarded with the butcher cattle. They would separate the calves from the cattle and put them in pens by themselves. If I were crowded for room, I might not give two calves a whole pen. I might mark them and throw them in with something else; but regardless of the number, I would take them away from the butcher

[fol. 804] stuff. If we had ten pens of calves, in showing them to a buyer some times they bid on the first pen—on the pens as they go along—and other times they might wait and ask what else you have got and then go back over them and bid on each pen separately. There is really no rule about it. Most of the calves received by our firm come from Wisconsin. Our firm receives more calves on Tuesday, I believe, than any other day of the week. Monday's run mostly to Iowa calves—not very heavy. Wednesday is medium and Thursday is the second largest day of the week we have on calves. On Thursdays they come mostly from Wisconsin. Some calves sell just as early in the day as other livestock and some of them just as late. The little butchers will buy their calves early and the big packers do not seem to come out until later in the day to buy them, and what is left they buy, of course.

As to whether it is as easy to sell calves as it is cattle, taking them as they run, or more difficult—the only answer I can give to that is the market will vary more in selling calves than cattle, in my opinion. The price will vary more. I never sold very many cattle, so I really could not pass an opinion as to whether the price will have an influence upon making it more difficult or less difficult to sell cattle than calves. I just couldn't express any view on that matter. [fol. 805] In the season when we have the hesviest run, we will actually finish calves as late as three o'clock. I don't ever remember getting through selling before twelve. I am only considering the selling and showing, not counting any office work or making up of any records. On Friday, sales will be completed earlier than the first four days of the week. We had sixteen calves to sell this morning and they are being looked after by Mr. Lawler. I was up there at the sales pens until quarter after nine and I had not sold them.

Gross-examination:

We don't sell more calves on Friday than Tuesday, because we don't get them to sell. We don't get them to sell because they don't come to the Yards. I don't know how we can change the receipts so we will be busier in the light seasons. We have periods during the year when calf receipts are lighter than at other times, because a cow can

only have one calf in a certain length of time, and they seem to be all bred for a certain time of the year—most of them. Therefore, we have slack periods due to the natural conditions that cannot be overcome.

I would not think there would be any way that I could be laid off on the light days and do my work on the heavy days. I don't know whether Mr. Lawler would have the time to handle them on days like today or not. In my judgment, it is necessary to keep salesmen that are able to do [fol. 806] the work throughout the year. Calves are different from cattle in that they are perishable and have to be sold—veal calves. If you were caught holding calves over for any length of time, the humane society would probably be after you. The perishable nature of calves causes larger fluctuations; for that reason we are almost forced to make a clearance of veal calves. The day they arrive we usually always sell them; and we are less able to resist a decline in the case of calves than we are in the case of cattle. I understand that there is a difference on the rate in trucked-in calves and calves arriving by carload. As to whether I meant by my answer on direct examination to say that the services rendered in the case of selling rail calves were worth the same as truck calves, I had just one day this week and had seven calves come in on a truck that belonged to seven different owners. I had to sell each calf separately—weigh each calf separately. I can sell a truck calf if I don't know whether he came in on a truck or by rail—I can sell it just the same. It does not make any difference about the selling of it. There is sometimes more bother in getting them.

I will say it is more difficult to handle truck calves but I don't see where it is any more difficult to sell them. I am discussing it from a standpoint of price resistance rather than the parcels in which I sell them.

[fol. 807] It would not be as difficult to sell ten rail calves as it would ten calves off the truck. There is a difference in selling truck receipts than rail receipts because truck receipts arrive in smaller parcels. It is more difficult to handle calves that arrive by truck. Calves are the hardest livestock to drive that I know of. They are the youngest to begin with, and very tender. They are always complaining about bruises. We have to handle them with more care than you do cattle. Buyers complain about bruises. Bruises

damage the carcasses. We very seldom handle calves that weigh over 300 pounds in my alley. The stocker calves are sold in the steer alley. Lately a good many calves are not sold on the Chicago market for Eastern shipment.

I have had occasion to examine the records with regard to the 1500 calves that I testified about being sold yesterday. I ascertained there were 1370, on April 4th of this year. I do not remember the state of the market. I do not know the number I sold and the number Mr. Lawler sold. Mr. Lawler generally supervises my work in connection with the handling of calves. He is the proprietor of the firm. I do not remember how I brought about a clearance, or how I sold them on April 4th. That is our largest run this year. It is not usual that we would have one-third of the total car receipts as was the case on April 4th. The day was unusual in that the bunches were all large. The number of owners were fewer than we would ordinarily experience in a run [fol. 808] of that size. And it took a few- number of trades than we would ordinarily have experienced if the bunches were smaller. Most all of our calves do come by rail. I recall especially that the calves in question came by rail. I remember that one of the cars was a double deck. I don't know whether there was more than one or not. It might be the largest run of the year and it might not; but it is a very good run (4,081 calves on April 4th for the entire market).

When we receive calves with a carload of cattle, we sort them off and take them to the calf alley, and from the standpoint of a mixture, it is as much of a mixture and represents the same kind of difficulty that you would experience if there would be a hog in the car. Where cattle and calves arrive by carload, under the present rate, we charge a higher rate than if the car contains cattle only. It is very justifiable from my knowledge and experience. I do not think it just or right that a carload of cattle and calves should be treated as a single species from the standpoint of the handling and selling efforts necessary. I believe that they should be treated as a mixture.

Redirect examination:

I very seldom sell any calves that weigh much over 300 pounds. Once in a while you get them up to 350 or something like that, but very seldom around 400 that I sell.

[fol. 809] Assuming that a carload came to our firm—say that there were several fat steers in them—and in the same carload there would be several of the butcher class of cattle, and then several calves. The steers would be separated from the butcher stuff, and put into separate pens—the butcher stuff into butcher pens and the calves in the calf pen. One of the first questions I answered for Mr. Boyd was in substance why I did not sell as many on one day as I did on another, and I answered because I did not have the receipts to sell. As to whether there would be no difference in selling calves on Friday—just as many Friday as I could on Monday, Tuesday or Wednesday—I would not like to have to sell a great number of calves on Friday because it is not usual that the orders are around on Friday for calves. Maybe it is due to the fact that it is known that the receipts are light on Friday—not entirely. Kosher calves would have to be killed, as I understand, before Friday afternoon or Saturday, for use to get them on the market that week.

If ten calves arrived by truck and belonged to ten different owners, I don't think they would be sold in one sale as frequently as would ten calves arriving by car belonging to ten different owners. Truck calves seem to run different grades; they don't seem to get them as much alike in trucks. If they arrive by car, belonging to ten different owners, I quite often find them in the same general class so they could be sold in one sale, and I think that would happen more frequently than in trucks—even though they [fol. 810] are different owners each time. As to why it would be more difficult to handle truck arrivals than car arrivals, omitting the selling, truck arrivals come in such small lots that it is just as easy to go over and get a big bunch of calves as five or six; it takes practically as much time; and the car arrivals are in fairly good time in the morning, while the trucks straggle in all day; so you get a telephone at the scale or the alley that there is a calf or ten calves just come in by truck over at the chutes and you have to send a man over after them, which does not happen very often by rail.

Out on soliciting trips, I pass out novelties—such as, small memorandum books, pencils and such things as that. As to any entertaining of our prospective customers or shippers when on a soliciting trip, we might buy them a

meal or take them to a show. I solicit from anybody—carlot shipments, or truckers or those farmers who would ship by truck. I go on soliciting trips by automobile and had to come back once by train. The farthest point which I go is probably 350 miles from Chicago. That would be in Wisconsin. I have not done much soliciting lately in Iowa. I make trips through the Northern part of Illinois and we call on anybody we think we can get any business out of, whether they are new or old. On those trips I meet representatives of other concerns who are soliciting. Every firm on the yard handles calves that I know of. There are some firms that get the most of the business—there would be more than three or four firms.

[fol. 811] Recross-examination:

On soliciting trips I have had our patrons invite us to stay all night with them, and I have had them invite me to meals which they pay for or provide—which reduces the cost of my travel sometimes. My soliciting so far as calves are concerned, is principally in the dairy sections surrounding this market.

Redirect examination:

The calf alleys or pens are located near the steer alleys. They are right next to the steer alley—right behind them. And the alley for butcher stuff is located a little farther away than the steer alley.

Mr. David Leland Swanson, a witness called by the Government, testified as follows:

Direct examination:

I live at 7834 Oglesby Avenue, in Chicago. Am manager of Chicago Producers Commission Association and have been manager of that Association for a little over seven years. We do business in the Chicago Union Stock Yards. The Chicago Producers is a corporation and it is called—and is a cooperative. It was organized under the Act of 1872, in Illinois, and later reincorporated under the Act of 1923.

[fol. 812] Our total employees at Chicago are about 65. It varies a little on account of extra help and so forth. The general nature of their employment is—salesmen, assistant salesmen, executives, yardmen, office workers. As to "executives", we have some combination men who are both the head of the department and the head salesman; for instance, there is the manager of the cattle department and there is another man who is head salesman. In the sheep department the manager and the head salesman is the same man. There is the office manager also, and the man who is manager of the cattle department is also the manager of the contact department.

The contact department has general charge of the advertising publicity, cattle, sheep and hog field service; general field service; complaints—these are their main duties. In the case of an actual salesman who would also be classed as an office man or head of one of our departments, Ernest A. Bielfus is the head of the sheep department, in addition to his duties as salesman. He, along with the manager, decides on the personnel of the sheep department and how much help and how much to be paid; also any other policies of a managerial nature that can be more easily done by him than by the manager.

The policies of the Chicago Producers are determined by the Board of eleven directors—these eleven directors coming, five from Illinois, five from Iowa, and one from Wis-
[fol. 813] consin. These directors were elected from districts in the annual meeting—four or three each year for a term of three years—and these districts are apportioned according to the amount of livestock raised and fed, and corrected for the amount coming to the Chicago market. The policies of the Board are carried out by the management. The manager either does it himself or usually delegates the responsibility on to enough authority to get the work done. The manager of a co-operative is placed in the center of a sort of a circle. On one side you have the Board of Directors immediately over the manager; then, a little farther out, you have got the membership determining who the Board of Directors shall be, and lots of times the members write directly into the office and a good many details are taken up and handled with only a general knowledge of it in possession of the Board; but whenever any new policies or any new matters come up, they

are referred to the Board. Then, on the other side of the circle you have the employees to be handled and taken care of; that is, you have got a pretty direct reaction if the country does not like the way things are handled; and all the complaints are regarded as the heart of the business—and as these complaints, all the correspondence is summed up and presented at each of the regular meetings of the Board of Directors, which usually takes place monthly.

As an illustration of under what circumstances the Board would take action instead of the manager of the Association, if the Directors thought the manager was getting too much salary, or was not doing his work, they would take that directly. If our association were to embark on a new [fol. 814] policy of any kind, it would not knowingly be done by me, alone. There might be some details that would be handled a little differently on the spur of the moment, because they required immediate attention, but that would be brought to the attention of the Board at the next meeting as to how it was handled, so that if they did not want that method continued, it could be changed.

When any new work is contemplated, it is brought up before the Board of Directors and the manager is supposed to give the Board the benefit of all the information that he and those directly interested in the organization can get concerning it, to the Board, both pro and con—whether to do it or whether not to do it. Sometimes it goes a step further and the Board will ask the management for the recommendation as to whether to undertake it or not. Other times they will just decide if they have had the facts laid before them. Some other times they will want to make a little further investigation on their own account before undertaking it. Quite frequently such methods will be referred to the Board of Directors of the National Livestock Marketing Association for their reaction as to whether they think it would be in line with the policies of the National Marketing organization,—for instance, the installation of the cattle field service on an extensive scale was undertaken in the Fall of 1927 or the winter of 1928, or somewhere in there—I am not sure. The reason for that was the requests we received for field service, or perhaps more [fol. 815] properly called market service in the country, consisting of appraising or estimating the value of cattle,

suggestions regarding feeding methods and advice as to when to market, and going so far as quite frequently the shippers requesting us to let them know when to market. In the discussion before the Board of this matter, it was brought out that although it cost money to render this market service in the country, still it was in line with the policy of the National Livestock Marketing Association, which was to bring about more orderly marketing. For instance, a cattle shipper likes to get in here on an active market—a higher market—and does not like to get in on a lower market. We had a very good illustration last week. We advised numerous people on Monday and Tuesday to hold back and not come in with their cattle that we had on our lists over there—people who called up and wrote in—and then on Wednesday we advised them to come for the Thursday market. The market was low and draggy Monday and Tuesday. Wednesday it pepped up and was quite active, and Thursday it was almost as good as Wednesday; and I think that as a result of that we contributed—we did not do it all, by any manner or means, but we contributed—toward a more steady market last week, and I think a little higher average price for all cattle than if there had been even more than there were the first of the week, and less the last of the week, because there would have been more taken off the first of the week than would have been apt to have been put back on the last of the week with the lighter receipts.

[fol. 816] Cattle salesmen mostly render our cattle field service. Occasionally an assistant salesman will go out to learn—that is, for experience more than anything. Sometimes we send a cattle salesman to a particular farmer upon request, but it is not the rule. Take in Illinois—I am using Illinois because last year 70% of our business came from Illinois—if a man writes in as an individual from a certain county, we get in touch with the chairman of the livestock marketing committee in that county and try, through him, to arrange so that our salesman will be down there at least one day—that is, have enough work for at least one day, and quite often two days, in the county. Sometimes it will be in one county—one part of one county one day and over in another part of the county the next day, with another marketing committee. Most of their trips are made on weekends, Fridays and Saturdays.

We do very little of what is ordinarily called solicitation. I take it for granted that if a man asks us and knows we are coming, that he knows we would like to handle the livestock through the Chicago Producers. If he don't know that, there is not any use in spending perhaps too much time on that man just trying to get him to ship, because you have to solicit that man over the next time and over the next time, and so forth. As to whether or not we have a request to send one of our salesmen to a man who does not belong to the Association, and whether we would send that salesman to him to appraise his cattle, would depend largely on whether we had requests from members near to him that wanted to have their cattle looked [fol. 817] at.

If we are sending a man down to a group of our members, and in the same locality, so that little additional time would be taken, we would appraise for a non-member. If we had no member in the vicinity, we would very seldom give aid to a non-member in that vicinity. The Chicago Producers is a member of the National Livestock Marketing Association—pays dues—50¢ per car on every car handled.

The purpose of the National Live Stock Marketing Association is to help solve the problems of livestock marketing; and since a good many of them are national problems, we can do it more effectively and cheaper collectively than we can working as individual unit.

The National Live Stock Marketing Association is a corporation and its members are cooperative terminal selling agencies—State livestock marketing agencies and regional livestock marketing agencies, three types.

We own stock in certain subsidiaries of the National. We own stock in the National Livestock Credit Corporation of St. Louis. Its purpose is to discount loans for the Chicago Producers through the Intermediate Credit Bank of St. Louis. Then, we have both preferred and common stock in the National Livestock Marketing Association itself, and we have stock in the National Publishing Association. The National Publishing Association puts out a monthly paper—the National Live Stock Producer. It [fol. 818] contains general information on livestock—all problems of livestock production and marketing. Then, we still have a little stock in the National Order Buying

Company. We also have some stock in the Illinois Agricultural Cooperative Auditing Association, a little stock in that. I think that is all—outside of our own subsidiary. We have a subsidiary of our own in which we own some stock. That is all the affiliated ones I think of right now.

We pay the dues in the National, as I mentioned before, and we also pay for a number of subscriptions to the National Livestock Producer—papers that go to our members. We pay through the general field service arrangements between the Producers' agencies in getting business out of Illinois and we also pay through the same sort of a fund in Iowa and then we pay to the Western field service. I think our charter, by-laws, rules and regulations are on file with the Department of Agriculture.

We have e[illegible] as salesmen in the Cattle Department, Ray Walsh, h[illegible]d steer salesman; G. C. Story, steer salesman; R. J. Fulton, [illegible]alesman of odd steers and stocker and feeder buyers; W. H. Howe, butcher cattle salesman; H. B. Duke, seller of odd lots and small bunches of butcher cattle; Henry Johnson, calf salesman; and Howard Thompson, bull salesman. We have salesmen in the hog department—Ralph C. Schrabb, manager and salesman; Henry Campbell, salesman; Lyell Chandler, salesman; Everett James, salesman; and William P. King, salesman.

[fol. 819] In addition, in the hog department, we have four assistant salesmen who act as head yardmen, head alley men and also sell most of the odd head of packing sows and pigs and stags, and so forth.

In the cattle department, we have as assistant salesman, John Harris—in both cattle and sheep; and he has been selling calves recently, while the calf salesman was on a vacation. He continued to sell calves while the regular calf salesman sold odd lots of butcher cattle—while the odd-lot butcher cattle salesman was on vacation. He spends some time in selling sheep and some time in selling cattle, but not on the same day or same week.

In the sheep department, Ernie Beilfus is manager and head salesman; S. R. Anglin, assistant salesman. Both of them also buy some sheep. And our assistant salesman spends some time in yarding.

I would have to look up the records of the time study to tell what time Mr. Schrabb would spend in managerial duties and in salesman's duties. It is a part of each day.

As a boy, I worked on the farm and also in the retail

meat business of my father in Galesburg, Illinois; graduated from high school and college, and had a couple of years in law school. Then I was in the retail meat business from 1912 to 1916, and after coming back from service in the Marine Corps, I went back to the U. S. Department [fol. 820] of Agriculture in the Bureau of Markets, and came out here to Chicago and instituted the meat reporting service for them. Was on that about a year and then shifted over to the hog market reporting. I left in April, 1922, to become manager of the Producers Commission Association at Indianapolis, which was just being organized. I was there until coming here in April, 1926. And I have remained here from that time on.

In 1932 or 1933, we made changes in the personnel of the Chicago Producers—January 1, 1932, E. I. Stephens, at that time manager and head salesman of the cattle department, resigned. There have not been very many leaving during the depression. I don't think of any other changes except in the yard and office help—that is, minor changes—right now, without going over the records.

We have instituted a general reduction in salaries or other expenses for the Producers. The reduction in salaries was a horizontal reduction—the same percentage all the way through. It was 10% on January 1, 1932—I think it was. And none since that time. Yes, there have been changes in policy of the general reduction in other expenses. You might put it this way: We have shifted some of the work onto other aspects of the business a little harder, and less on others. To illustrate—closer checking up of the mailing list, in one case; and sending out more material under one cent postage rather than three. It resulted in getting more information out to more people and [fol. 821] less material falling on what you might call unproductive ground.

Our association does not set aside any percentage of its income, net or gross, to be expended in advertising, business-getting and business maintenance. As to what our association actually does in the way of advertising, and what has been called business-getting methods, a good many of the services are in reality services and the business-getting quality of the service is more or less incidental. Now, as to advertising, we start out with market reports—market letters. Market reports are put out every two weeks on Wednesday, by our association. We obtain the

information through our salesmen and buyers, the United States Bureau of Agricultural Economics, the Drovers Journal, and the Research Department of the National Livestock Marketing Association. We use the radio—that is done daily, Monday to Friday, around noon on WJJD and on Saturday noons on WLS. As to novelties, we get out books, pencils, mostly bullet pencils, marking shears, sheep markers and a few canes. The shears and sheep markers are given out so that it will save us complaints. They can mark their stuff effectively and with less liability of mixes when they bring them in.

We seldom advertise in the daily papers or weekly papers that are general newspapers in general circulation. Since I came with the Chicago Producers, our shipments from the Western States have increased some—shipments from Iowa decreased and from Illinois increased, in a [fol. 822] general way.

The points farthest west from which we receive shipments are Washington and Oregon; South from Texas; and also Montana. Twenty-five States in all last year.

As to what else we do in the way of advertising, it is pretty hard to draw the line in the livestock commission business between advertising and publicity. They join so closely together. As to publicity—you asked about market cards—now in regard to market letters, we put out a special letter to men who have steers on feed, a special butcher cattle letter, a special hog letter, special sheep and lamb letter, and then, during the buying season, a special letter on the purchasing of cattle and the purchasing of sheep and lambs. We get our information for these market letters from the same sources as mentioned under market cards.

We have a different mailing list. They are worked on constantly. Some of our customers just get one release and some get two and some get three, four, or five; and we put out on Saturdays to the members of the Livestock Marketing Committees, banks, county agents, teachers of vocational agriculture, and so forth, the Successful Co-operative on which is news of the organization on the front side, and on the back side is the market reports on cattle, hogs and lambs with near future prophecies.

[fol. 823] We advertise that we render sales and service equal on the average to any firm and better than most; and I believe that to be true.

We maintain a transportation and claim department and collect railroad claims without direct charge to the shipper, and carry the expense of that department in the general overhead. We also maintain the transportation part of that service by furnishing quotations on rate for movements, and also assist shipping managers to have their facilities improved at country points.

We sometimes send a man out to the country managers to advise with them, but usually it is more effective for the shipping association manager to write in because we have it in writing then, and our transportation department, in taking it up with the railroad company, can get more done that way than they can by just talking to the railroad people.

The loan service was put in in 1923—the Fall of 1923, I think—primarily to assist worthy livestock producers in getting credit when it was not available locally, and incidentally to help hold interest rates in ine out in the country. On that service, we just make the interest charge which goes to the National Live Stock Credit Corporation. The loan service should be classed just about like the cattle and sheep field service in that the shippers [fol. 824] request help in getting loans. The loan service is handled by the office manager, C. D. Beck. The transportation and claim department is handled by members of the transportation department of the Illinois Agricultural Association at a flat sum per month.

When requested, we attend meetings, cooperative meetings in the country—I mean cooperative association meetings. We also attend livestock feeders group meetings. I think most of the other services are performed here on the market, but they reflect back to the country.

The policy of the Chicago Producers is to maintain a force sufficient to care for peak runs. We believe that that makes it possible to sell livestock more efficiently day in and day out. It does cost a little more to do that, but when the runs are heaviest is usually when the market is draggy and when efficient selling counts for more. We also carry more than ample bonds in order to keep up the confidence of the country in the Chicago market. It was shown to be a good thing during the moratorium when we found out that we had been in the banking business, but did

not know how extensively. We had a large number of checks on March 3rd. We had a large number of checks outstanding not only through the month of February, but January as well, and we still had a large number outstanding in April, May and June.

[fol. 825] In working on grades, we have always cooperated with the United States Department of Agriculture and the packers in helping to develop definite systems for the grading of livestock. We believe in that, because the improvement in grading facilitates the marketing and tends to distribute according to value, increases the consumer demand and sends more money back to the country.

[fol. 826] We also cooperate with the Illinois Live Stock Marketing Association, and the Iowa Live Stock Marketing Corporation, by furnishing them constantly information on the exact status of this market on all classes and grades of livestock. Another phase, the Boys and Girls Club Work, the Chicago Producers have supported very actively for years, the 4-H Club movement awarding medals to champion members of the 4-H Calf and Pig and Lamb lub, in the Chicago territory for their champion members. We also entertain at a luncheon during International Week for champion members of the various Boys' Clubs that are in them. We also from the very beginning have supported and sponsored the auction sales of club calves that are held during the late summer and fall months, handling approximately three-fourths of all the calves marketed through these auctions. Market tours, handle them upon invitation or by request, taking each group through all the departments and various activities of the selling agency here, and also showing them the function of the other selling agencies, and the stockyards, and the packing houses, and the railroads. In general, have made it possible for the person participating in a tour to get a first hand and first sight information of live stock marketing, which reacts to the advantage of the individual participating, as well as the origination contributing that service.

We don't make an extra charge for account sales, that is, we make them on one big sheet, and there are duplicates, they are perforated, and then can be torn off and we don't make any extra charge for that. Yes, I have made a study [fol. 827] of our present schedule of rates and charges. I think the present commission rates schedule when it was

put in ten years ago, practically everything was coming by rail, and at that time it was really a weight rate basis, making allowances for number of head. That is one instance, the rate on a carload is based on single owner cattle, $17.00 to $21.00 if it were 24,000 pounds for heavy cattle, and if there are only 17 head, the rate would be $17.00, but if it was over 24,000 pounds of light cattle, and there happened to be 27 cattle, it would be $21.00, but the basis was largely a weight rate on cattle, and hogs as well. I think that with as big a percentage as we have coming now by truck, and in light weight cars, I think the commission rate basis should be on the basis of weight, so much per cwt. for cattle and hogs, with a minimum on a small number, odd lots, that is, for cattle and hogs, and left on a per head basis on calves and lambs. If you attempt to figure a commission rate on a per head basis on cattle, you can do it on cattle weighing from 800 to 1200 pounds, say, all right, because the average weight of cattle coming in here is around 950 pounds, but such a rate that would be fair from 800 to 1200 pounds cattle would be too low on 1200 to 1800 pound cattle in relation to the 800 to 1200 pound, and too high on cattle from 400 to 800 as compared to cattle 800 to 1200 pounds.

The circumstances that would make that differentiation, just by the complaints I have had on light weight cattle and light weight hogs, and pigs, a very evident injustice. [fol. 828] Now, on hogs, with the average weight of hogs around 245 pounds, you could make a rate per head on hogs, if they are all weighed, from 200 to 300 pounds that would be fairly satisfactory, using minimum numbers and maximum numbers; in the same way that rate would be too low on hogs weighing from 300 to 500 or 600 pounds, as compared to hogs weighing 200 to 300, and it would be too high on hogs weighing from 200 down to 100 and below, as compared to the 200 to 300. The reason that you can make a per head rate on calves and sheep is because with calves coming in here, most of them are veal calves and weigh largely from 100 to 225 pounds, averaging around 150 pounds. With your lambs, most of your lambs weigh from 60 to 110 pounds and average around 85 pounds, so that you can figure per head rates out pretty accurately on calves and lambs. Getting back to the fundamental question on what basis the rates should be made, we have cattle

and hogs hauled in here by truck and by rail, and very seldom is the rate on anything except a weight basis. Then, when we sell the cattle and hogs, we invariably sell them on a so much per cwt. basis. After the packer has slaughtered the animal, he sells the meat on a per cwt. basis. Like any rate structure, you might call attention to some of these inequalities but I am positive that you would not have half these inequalities that we do under the present system if cattle and hogs were put on a cwt. basis. And heavy weight cattle on per head basis looks a little low while the rate on light weight cattle and light weight hogs looks [fol. 829] a little high, sometimes more than a little high and sometimes more than a little low.

I think that there are as many cattle in number between 400 and 800 pounds as there are over 1200, but not as much in weight, of course; that is just an estimate. I have no figures in mind. The average weight of hogs is 245 pounds. I could not give you the percentage. You would have to count that because the average of all hogs were put together and in one average cost, and the average cost of cattle are according to the grade and weight of both.

In our own schedule we do have an extra service charge. The extra charges are in an exhibit in the record. As to whether I have made a study to determine whether the extra charges made for those extra services do or do not compensate us, the only way I can answer that is to say that we have stated that some of them do compensate us and others do not. Now, on the average, I would say that they do just about. As to whether the tariff covers the extra cost I would have to work that up with the auditors. I could not answer that at this time.

I would like to put this statement in: I think the U. S. Department of Agriculture, before making a ruling on the reasonableness of the rates at Chicago, should have a study made of the possibilities of putting a per cwt. rate on cattle and hogs with minimums on small lots. The two [fol. 830] big reasons being more fairness in the commission rate charges and also the simplicity of the rates, making it possible for the producers of live stock to easily familiarize themselves with them. I do not care to submit a proposed schedule at this time. Rates under the schedule I suggest would be the same for trucked-in live stock as stuff arriving by rail. It would be on the per owner basis.

I would make an allowance for unusual conditions with reference to drafts, that is, as the drafts increased, it would carry an added charge in the case of trucks, and that would be the purpose of having a minimum; but all other conditions being equal, the truck rate and the car rate would be the same.

Prior to the first of the year or substantially the first of the year, we charged the rate fixed by the arbitrators. With the exception of a little over four years ago, we put in a rate that wherever a man had the equivalent of a carload in number of weight coming in by truck, he was charged the same as though it came by rail. That was about four years ago, I believe.

About the middle of December, 1932, we made a change in our tariff. The object of that change was to create a change in the conditions which I have described as a fair condition as between the shippers to our company to bring about a more equitable condition to cover that situation. In taking care of the so-called light minimum weight cars, [fol. 831] that is, 10,000 pounds or over, we felt that we should also take care of the same amount of stuff coming by truck if in one owner.

The Chicago Producers Commission Association is a non-profit organization, and if the charges that are made are in excess of the cost of rendering the service, that portion is owned by the membership, and we have the right, under the law, to make a dividend under the Packers and Stockyards Act, if our Board of Directors choose to do so.

As to whether I believe that the revenue produced under the schedule provided by the arbitrators represents a schedule which provides under the usual operation of the commission houses at Chicago any more than a safe margin for the operations usually encountered at Chicago, not as to the inequalities in the tariff but as to the total sum to be derived from the application of the rate on the whole; the only way I can answer that is to say that our revenue in the past seven years has only been sufficient to handle the business in an efficient manner, build up a reasonable reserve and take care of the expenses and extra services not required in the commission business.

We do not feel that we have engaged in any wasteful conduct and we have stressed service refunds rather than cash. [fol. 832] When you consider our policy, not only of

handling the current business but preparing to handle an increased percentage as we go along, I do not think we have been overmanned. I believe the general policy of a house should be to take care of what they believe may be an increase in business, at least to a small extent, a reasonable extent.

I believe it would be unreasonable or unfair to expect that employees would be constantly and regularly engaged in handling the full capacity that they can handle on different days of the week, different days of the month or at different seasons of the year. It would be impractical to try to run a commission business on that kind of a basis, if you were counting on increasing your percentage of volume. I would naturally expect that anyone engaged in a competitive business of this kind would strive to be able to improve their conditions.

Naturally, I feel that the money that we have expended for advertising or soliciting, as I have heretofore described it, was neither extravagent nor excessive, but was the result of the exercise of sound judgment. I do not feel that in such expenditures we engaged in extravagances. We might have slipped once in a great while and spent a little more. We spent no more than would be expected in a business of this sort. If we could have handled our business with fewer employees efficiently, meaning to sell efficiently [fol. 833] rather than to just sell, and also with due regard for the future, we would have done so. The volume of the Chicago Producers Commission Association was as great, or substantially as great, as any other agency on the market. We had more than one man engaged in the sale of every species, and had the opportunity to demonstrate and to know as complete performance, to demonstrate full performance or as full performance, as could reasonably be expected to get from those men engaged in the sale of livestock. Of course, if it had been possible to have reduced the number and do the work, as I have described, in an efficient manner, I would have done so. The receipts vary as between even some of the larger firms. For instance, a firm might have a big percentage of straight carloads, whereas, we would have perhaps fairly close to the average percentage of straight carloads and cooperative loads and trucked-in stuff.

"Q. Well, looking back over your business in 1932, you believe that the costs that are reflected in the figures representing minimum outlays in properly handling the business which you did handle, with this exception, that you indicated that you expected to handle more business and, therefore, tried to create a safe margin to cover that condition? [fol. 834] "A. I will answer that question this way: With this exception, that your hindsight is always better than your foresight. You said looking back over, but, as we went along from day to day, looking forward, I do not think we could have done any better.

Q. And a man in this business is bound to conduct his business with regard to the future?"

Our volume was great enough to demonstrate efficiency in the matter of performance of the men engaged in the business. Our business is substantially as great as the entire business at Oklahoma City; and it was as large, or almost as large, as the entire business at Wichita, so that we have in this instance a firm as large as the total business done by all the agencies at these markets. The only record we have kept as to actually what our individual salesmen do in the way of volume of performance is in the personal inspection and checking up and then on the averages.

Our average per salesman in the cattle department was about 700 cars, 7 salesmen, and about 5,000 cars or equivalents.

In hogs it was about 6,600 cars with about 800 off for the number that the assistant salesman handled in odd lots, which would leave about 5800, and with the manager and 4 salesmen, it would be five into 5800, which would be al- [fol. 835] most 1,150. And in the case of sheep it was a little less than 2,000.

"Q. I haven't the figures. We had to guess at it, because I didn't have them.

A. That would be 1,682. I would estimate a little over 1,000 cars for the head salesman and around 600 cars for the other.

Q. Assistant salesman?

A. Yes, sir.

Q. So that it would follow, would it not, that it would be reasonable to assume that on account of the large volume that you have and the nature of these receipts, and the spread from season to season, and the possibility of getting

mixed performance, that that figure should be regarded by comparison as one which could not be obtained by a smaller firm that would not permit of as much diversity?

A. I think that is so and I think further that consideration should be given to the amount of market service in the country we give in connection with cattle and sheep, whereas, we do not give much of that in connection with hogs. In other words, those salesmen are on duty just as much in the country as they are here."

[fol. 836] The main objection I have to the existing tariff is the method of levying the charges rather than the total sum of money charged. I don't think that due consideration is given in this rate making to volume. I think in our particular case we have a volume sufficient to produce the maximum in performance in connection with our employees. The profits that were made both years went into reserve and the rest of it went into those other services. I don't think that the rate for the service which we rendered produced an excessive profit. The rate which we charged was not exorbitant for the service rendered under the circumstances. If the rates were drastically reduced, there would have to be a readjustment, and whenever you have readjustments the people with the ownership of the products to be sold suffer during that readjustment.

Selling conditions on the Chicago market have certainly been discouraging in the hog market the last month and a half.

Usually anyone you would consider for promotion or employment could sell what might be regarded as an average amount, if he got them. You just sort of take that as your major premise when you first start considering a man, and then you go ahead and try and determine how good a job he can do, that is, in addition to honesty and loyalty, and when you get down to ability, he has got to have the [fol. 837] ability to grade the livestock that he is going to sell, in the first place; and in the second place, he has got to be a man that keeps up with all the conditions of the market here and at the other markets and meat markets and all the information of that nature; in the third place, he has to be able to be enough of a student of human nature to get along with the buyers, be a good trader; in the fourth place, he has got to be pleasant and cheerful and satisfy the customers so that they will come back again, and you

have got all those things—I mean ability of a salesman can be divided into probably those four classes in addition to the fundamental requisites of loyalty and honesty. And these conditions are not governed or controlled by any other influence, as in the case of volume. Volume is beyond the influence of the man himself, except insofar as, if he measures up in ability as defined, he will be apt to get whatever a normal average amount might be coming back to him. That is, you don't want a salesman that drives business away from you. But certainly you want a salesman that, by reason of his excellent service, will cause other people, through the satisfaction that they get from the employment of his service, to come back to us and to look to us as a good outfit.

Redirect examination:

When I mentioned drastic reduction in my cross-exam- [fol. 838] ination, I had in mind rumors of 30 to 35 per cent. I mean a definition of "drastic" in that case.

Considerably less than half, I would estimate about one-fourth, of our firm's business is done for non-members.

I think our salesmen can sell efficiently a little more than the average of all firms.

As to whether I believe our salesmen can handle as much livestock and sell as much livestock as the other salesmen in these yards, there are so many salesmen on the market and it covers so much territory that I do not believe I could answer that accurately. In my opinion, our firm could handle more livestock of each kind than we are now handling, I mean to sell, handle and sell efficiently, but I don't understand that we can do that with the same force that we had in 1932.

We could have handled, with the same force, more business if it had been received on light days and active markets. Our receipts will come heavier on some days of the week than on other days. I suppose we carry over less livestock than the average commission firm except that we do carry over in our subsidiary. Naturally, they handle less on the other days than they do on the peak days.

Last year our peak day for receipts was a little over 100 loads. It varies from week to week. By peak days I mean, first, the days when we have the heaviest receipts, and, [fol. 839] secondly, the heavy receipts into the market. The

peak days of the week vary. Tuesday, Wednesday and Thursdays are the three peak days usually, which omit Monday and Friday as peak days. As to the largest of the three peak days, that varies a good deal according to how we pull it in. As to whether our same force could sell as many on Monday as they sell on Tuesday, Wednesday and Thursday if we had the receipts, I think I could best answer it by saying that when I first came here they used to be Mondays, Tuesdays and Thursdays and that Monday still remains the heavy day. The only answer that I could accurately give would be that we might be able to handle a little more business on some Mondays, and that if we could not handle and sell it efficiently, we would put on a little more help. We do not investigate to determine whether a salesman controls any business when we employ him. We employ him practically entirely on the basis of a man's ability from the handling and selling standpoint.

In the fall of 1931 in the hog department, our hog department manager at that time left to become sales manager of the Illinois Livestock Marketing Association. A little later on, one of our hog salesmen became manager of the Illinois Livestock Marketing Association cooperative concentration point at Galesburg, Illinois. The last fall, an assistant salesman went from here down to Galesburg. This spring, in [fol. 840] April, I think it was, the assistant hog salesman went to Bloomington, Illinois, as manager of the cooperative concentration point there of the Illinois Livestock Marketing Association.

As to how long a time I think is required to qualify a man to become a bull salesman, well, we try some out and they never become bull salesmen. Of those who do become accredited bull salesmen, some require a longer period of training. I do not know as I could give you an accurate estimate of the average length of time. Our present bull salesman ran a concentration point for Armour at several different points in Iowa for a number of years. All of our salesmen have had several years experience before they were actually put to work at selling, either here or somewhere else. Even assistant salesmen, selling a few odd lots of hogs, very rarely do we ever let a man try to sell any of them unless he has had at least two years' experience here yarding and sorting before.

I think I stated this morning that our policy had been so far to put extra profits into reserves and into extra services with an idea of increasing our volume and thereby acquiring a larger bargaining power on the market.

Recross-examination:

The balance sheet that has been introduced into the record will reflect the facts with reference to the disposition [fol. 841] of the earnings but it would have to be analyzed to show what went into extra services and what went into regular services. We regard those services as advisable and justifiable.

The selling effort involved in disposing of the receipts on a Wednesday of one week might be entirely different than Wednesday of the next week. From the standpoint of the receiving of receipts and handling and selling them, I think those three days could be called the peak days on an average, that is, just from that standpoint. On some of those peak days we don't have to work any harder than on some of the light days. If we had a good market at one season of the year we might expend a great deal less selling effort in disposing of our peak receipts than we would on the same day at another time of the year when we had a bad market; so on that basis they couldn't properly be used as an average of the amount of time spent in selling a certain number of head.

Recross examination:

I think my Board of Directors expected me to conduct our business as cheaply as possible, consistent with the rendition of good service in 1932. And I attempted and did carry out that wish as well as I could.

ALBERT FICKLER, a witness called by the Government, testified as follows:

[fol. 842] Direct examination:

My temporary address is 4300 Ellis Avenue, Chicago, and I am general manager of the Farmers Union Livestock Commission, Chicago. That is a market agency on the Chicago market. I was elected to that position March,

1929. I have been acting in the capacity of general manager ever since that time. Immediately prior to that time I was farming and a member of the Nebraska House of Representatives.

My experience in the livestock business has somewhat varied. It goes back over quite a few years, my full experience in livestock. Well, my father ran the first meat market ever was in Platsmouth, Nebraska. I learned that trade under him. I did not like the butcher business and I chose the farming as my profession and moved to, went to my father's farm, and followed that occupation for a number of years, and I think in 1922 I was elected on the State Board of Directors of the Farmers Educational and Cooperative Union of Nebraska, and was appointed a Director on the Board of the Farmers Union Livestock Commission at South Omaha, also represented Nebraska at Sioux City, Iowa, as a Director, and upon the reorganization of that marketing agency, I was elected President of that Board in 1924. I served in that capacity until 1926. Then I was requested by the Board of Directors to assume the duty of general manager of that marketing agency, which I did, and served either the latter part of 1927 or the early part [fol. 843] of 1928, and then went back to the farm and farmed and then went to the Legislature.

The Farmers Union Livestock Commission is a corporation, organized under the laws of the State of Iowa, cooperative laws of that State. It was organized I think in 1922. We handle business for whoever ships to us. The membership in the agency at the present time—Farmers Union of Iowa, the M. F. A., of Missouri, Farmers Union of Wisconsin, the United Farmers of Illinois, they have a director who represents, as I understand it, the unorganized patrons of the market. The M. F. A., of Missouri is a cooperative marketing agency. The same is true of Wisconsin; South Dakota is also a member, the Farmers Union of South Dakota.

It is a general marketing program of farm commodities as I understand them. Yes, they all derive their rights in the marketing agency through a membership.

My duties, as indicated by the words "general manager," are rather general in scope. I oversee the different departments here at the terminal agency and am called upon by the member organizations to meet with them, help organize

shipping associations, and bring about harmonious working arrangements, deliver addresses in the interest of livestock marketing, sometimes come down to see you in Washington when we get in trouble.

[fol. 844] To begin with, the Board of Directors define the general policy. I function as an executive officer in carrying out to the best of my ability those policies. I am necessarily called away from my office here in Chicago, and I have departmentized the different groups and have a department head for each group. What I mean by that is that there is a head salesman in the cattle department, who would be held responsible in my absence for the cattle department. That is true of the sheep and the hog department, also. The office department is the same. Nearly every day when I am in the office I, as general manager, confer with our various department heads from day to day in regard to their activities. As to just what matters would be handled by the Board as a guide to me in the management of the concern, we could discuss the matter of overhead which is paramount. We mean to comply with the rules and regulations that govern livestock marketing. We discuss rates and the policy of doing organization work or not doing organization work in certain territories. By that I mean organizing shipping associations and sometimes federating of different organizations that wish to affiliate with us in that particular territory. The method of handling finances, anything that would, in the judgment of the directors or myself, tend to render a higher degree of efficient service to our patrons.

[fol. 845] Our Board of Directors meet quarterly but generally adjourn subject to the call of the chairman.

I do not know without referring to our records what percentage of our business is done for members as compared with the percentage done for non-members. Our business for the shipping associations has been decreasing because, in my judgment, direct marketing is one of the most important elements that enter into that. The growth and development of the trucking business has influenced it; that necessarily goes along with the direct marketing program. There are influences brought to bear upon the trucker that do not enter into rail shipment business. Association consignments, when they come to market, consist of livestock usually belonging to more than one owner. The purpose of

the shipping association is to assemble livestock from different producers and make up carlots and consign them to market. That is the fundamental principle of the livestock shipping association.

As to how we sell shipping association business, it varies widely. The nature of our marketing agency is such that we are owned and controlled by the membership and we try to conduct the business according to the wishes of the shippers. Sometimes we will have instructions that come within the rules and regulations of handling livestock that are directly opposite to any other shipping association. I think it is as often the case as otherwise that we receive instruc- [fol. 846] tions from a shipping association manager in regard to the method to be pursued in handling a consignment when it reaches the market. If it is left to us we handle it in the way that would be the least expensive and give the greatest net return to the shipper. The usual practice is to prorate these association consignments. Our prorate sheet is a large sheet, perforated and each individual owner's abstract of his transactions is contained on that sheet and if a remittance is to be made separate there will be a separate check returned in accordance with the instructions from the manager as to the disposition of the proceeds. It happens that the association manager will instruct our firm to return the proceeds in one check to him along with this master account sale. In that event, he distributes the money on the basis of the information which we furnish on this master sheet. The usual occurrence is that the consignments of shipping associations are plurally owned. In such cases the manager of the local association furnish- us with information as to the ownerships in the carlot. We get that from what they call the home sheet that accompanies it with the weights and names of the different owners and the markings. It does not always check but he is supposed to mark the live stock in a certain way so that it checks with the home sheet. We have used different methods but the method that we think is the most effective is the curve bladed scissors and clip the hair in different designs, [fol. 847] or the bristles, as the case may be.

If, in a consignment of that character where we have livestock belonging to several owners but the livestock being of the same grade and class, our firm sells them in a group or classifies them in groups as to grade and quality,

irrespective of ownership for the purpose of sale. I think that is the practice but there may be divergence from that. In fact, the instructions might be different.

You might have two or three farmers go together and consign, we will say, a carload of hogs, and mark them, and each one require a separate account of sale, separate check, and demand that each one's livestock be weighed separately, whereas, if a carload of hogs came from a shipping association, the manager would say, "Use your own judgment and remit in the name of the shipping association to a certain bank the net proceeds." There is a wide scope of difference that could enter in. That is only one or two of them. I think there could be more. We receive instructions from the shipping association to deposit proceeds directly in the bank for the entire association along with the master sheet, and send it to a local bank, or place it here in a bank in the city, subject to the credit of a local bank. Also remit by currency. There was a time that the most common method of remittance was by cash or its [fol. 848] equivalent. They are still demanding cash since the moratorium in some places where they do not have banking facilities. We hope that situation will clear up. I think that method of making remittances has become more frequent within the last two years. It was a very rare occurrence in my earlier experience in the live stock business.

We have lost lots of shipping associations that the method of direct buying has in other firms put them out of business, but, as a rule, they do not organize a shipping association until there was a local demand. If there is a local demand for a shipping association, they usually patronize their own industry.

My work in the country is not confined solely to the matter of organizing shipping associations. I help in federating or bringing together different organizations such as, to give you a concrete example, the milk pool of Wisconsin is federating with the Farmers Educational and Cooperative Union of Wisconsin and both the groups requesting my presence at their meeting.

I have not personally sold any livestock on the Chicago market. I have advised, where the head salesman and I would discuss matters.

I have a field man who devotes his entire time to general work or organization and soliciting those fellows who have strayed away from the fold. He spends his entire time in the field.

[fol. 849] Frequently my salesmen are requested to come to the country and when they get there, the customer will say, "Well, I want you to meet my friend over here." He may or may not have been a shipper of ours. He will go over and he will answer any questions that in his judgment he feels capable of answering, and no doubt he would extend an invitation to him that if he saw fit, he would like to handle his livestock if he comes to the Chicago market, but if he was in Kansas or some other state where we had a terminal agency, they have explicit instructions to not favor one or the other market but to give the shipper their best advice and then say "go to the market which will net you the highest returns for your livestock."

The purposes for which shippers request the presence of our salesmen is a pretty broad question. There are some questions asked you when you get there, something that you or I might not consider directly pertaining to livestock. They ask you, what is your opinion as to the gain that these cattle have made, perhaps we have bought the particular stock that they are viewing. There are a number of different questions that come up during these meetings and it would be pretty difficult to enumerate all of them, but those are the major questions as to what in your mind are the existing conditions that would warrant feeding longer, or if the stock should be marked in a semi-finished condition, or whether the trade was demanding a higher grade [fol. 850] of finish; many different angles enter into that conversation. We comply with the request to go to the country where it is practical to do so; we are the hired men, and if we ignore them too frequently, we are apt to hear from it. As to whether we will or will not comply with the request, it would depend upon who they would ask to come. It might be a salesman and he would not feel justified in leaving his post of duty at that particular time. If it was myself and I could leave the office, I would try to comply with it. I have instructions from my Board of Directors to do so as much as I deem consistent of the field work, but they may, the head cattle salesman and the sheep man and the hog man, in that case, he would try to comply

with that request if it did not interfere with the duties of that particular individual.

I try to have leeway to arrange, if possible, for several of our employees to rotate so that we will eliminate the cost of making a long trip for one individual case. The shippers are fairly reasonable in respect to the head of livestock which — have, they would have a carload or more if they would request you to make a special trip to their place to see them, unless you were in that immediate vicinity and then they would probably ask you to come for a lesser amount. Our firm does not make a special effort to obtain truck-in consignments not any more than any other con-
[fol. 851] signments. The shipping associations who consign by truck are not very many. I think on the majority of our truck-ins the trucker would be instructed by the shipper as to where they were to go.

The yard help is frequently shifted. The heads of the department, they very seldom, I don't think they do any selling but to give you a concrete example, I will go down to help yard hogs, sheep or cattle, if it is necessary, but I would not undertake to sell. I would not consider that they were efficient to step from one species to another and efficiently sell. In other words, our salesmen are confined each to his own department. All of our salesmen render more or less service in the office. I think you would get the details of that much better from one of them, but they do various jobs in the office. They look over the home sheets and segregate the tickets, help those that are making out the account sales, giving information. If there is any confusion or errors they help straighten them out more rapidly. They do quite a little bit of very necessary work there assisting the office force because they have been on the ground and know the transaction up until the time it arrives in the office, and there is some clerical work done, as you know, before it arrives at the office. That would be in the way of feed tickets, scale tickets and the markings. They keep the markings, all of them, all separate and see that they are corrected with the home sheets.

[fol. 852] Our firm operates independently, speaking from a financial standpoint, from any of the state associations with which it is affiliated. We pay for our advertising in

the official organ the same as anyone else would who advertised in it. I have reference to the Farmers Union paper of Iowa or of Nebraska, or whatever state it was from; we would carry an ad in it like we would in any other newspaper. We advertise in some of them every two weeks, I think some of them are monthly, whenever they are published. We carry a regular ad in those papers.

Our national president mentions the livestock marketing agencies sometimes in his radio address. We carry a few ads in local papers where we have shipping associations that have requested that we advertise in the local papers. The circular, of course, goes to the mailing list. It is something in the nature of a market letter, and while not altogether, it gives a resume of the market, the head salesmen and their addresses, the manager's name, and there might or might not be some little comment from the salesmen. It varies and changes the copy quite frequently. As to the time it is issued, that depends on how busy we are. We try to get it out on Thursday, and sometimes we don't get it out every week. We maintain a regular mailing list for that. Our mailing list is revised from time to time and if some of our customers have gone out of the livestock busi- [fol. 853] ness or move- away and we don't happen to have their addresses any longer, then they are discontinued and we don't try to mail those to people unless we, in our judgment, think they are interested in them. I think it is the rule that we mail them only to customers. There is a personal market letter that would be mailed and that is true of the circular. If he was not a customer and would request a circular or a market letter, he would be put on the mailing list for whatever reasonable length of time he would be interested in it. These circulars quite frequently contain mention of sales of a certain species and the weight, if they see fit to make a little comment on it. They are made up by our advertising man and the head salesmen.

We laid off four or five during the period of 1932 up to the present time. They have not been replaced by other people. One of them was out of the office and the other three or four, whichever it was, were yard and alley men. I don't think I laid off anybody in 1933. It was part of an economy program on the part of our firm. During the past year or two we have made changes in the business by way of reductions in salaries all the way around. I think it

was 15 per cent on all employees drawing over 100 dollars a month. It was made at two different times, but it all occurred, I think there was part of it, in 1933. We did not take on any additional employees in 1933. There are times [fol. 854] when we employ extra yard help. After reductions in other expenses, we tried to economize in the office in regard to supplies. We discontinued paying scale men.

I generally discuss hiring or discharging employees with the Board of Directors, if there are any changes of great importance, like the head of a department, or something like that, but otherwise it would be left up to my recommendation. I have not hired anybody for several years and when I did I hired them and notified the Board that I had hired them and they said "O. K." We try to cooperate.

The stocker and feeder division pays its own overhead and it is purely a matter of bookkeeping while the funds are all, an interlocking arrangement, but they are segregated so that we can determine whether the stocker-feeder is operating at a loss or a profit. We cannot predict just what would be the outcome of that. Sometimes it would show a loss in a month and the next month will wipe it out and leave a little balance. We don't try to operate it at much above the cost of operation. We try to give the shipper the benefit of the raise in prices, if there be any, and any profits that one may make may be wiped out by a loss and the other fellow would be getting the benefit of that. We fill no orders from the stocker and feeder and only [fol. 855] handle hogs. We have never put sheep or cattle through the stocker and feeder.

I could not quote the tariff of our firm but it is the same tariff that the Exchange uses. We follow that tariff.

In my judgment, if there is not some way of lowering overhead without impairing efficiency, speaking from my past experience in regard to service rendered, this tariff is not much out of line. I have not made a cost accounting study so that I would not want to, while generally I know there is more service rendered for the same number of livestock arriving at a terminal market today by a large percentage than it was, say, ten years ago, when I was actively engaged in shipping livestock for my own account. I operate my farm with a tenant.

There are certain fixed charges here such as rent and bonds that cannot be avoided, and we have no power, or,

at least have not been successful in getting them reduced, and with those existing conditions it is at least contributory to the necessity of charging the existing tariff.

Cross-examination:

It is much more expensive in a general way to operate in Chicago than at Sioux City where I was general manager, and I think that is also true, from my observation as direc- [fol. 856] tor on the Omaha Board of Farmers Union Stock Commission. I think it is true that the arbitrators did a just thing in allowing the Chicago market a rate higher than was allowed for Omaha. I pay particular attention to the overhead of a business that is entrusted to me as general manager and I pride myself in operating as economically as is consistent with efficient service, and I am continually trying to economize in every way that will not impair efficient service, and I am unable to lower my per car cost of operation on this terminal in comparison to the other two terminals which I have referred to.

From a cooperative standpoint, my personal ideas are that a rate that permits you to establish reserves and branches out of the present tariff would be beneficial to the producers of livestock. A rate which provided only the bare cost of rendering the service would result in my judgment: That if the cooperatives wish to establish those reserves or extend service which they deem necessary, they would have to devise some other means of providing that revenue or do without that service.

I think that it is true that the rate does not now produce under the most proficient method that I know a rate for this service which could be regarded as unreasonable or exorbitant from my viewpoint. I have always looked upon Chicago as a basic price fixing market, and anything that [fol. 857] would tend to lessen the efficiency of that market would ultimately reflect detrimentally to the livestock interests. Our Board of Directors expect me to run the business and keep within our income.

The majority of our patrons are not objecting to the present tariff but are much more concerned in cost of production of livestock than they are in the service charge at the terminal.

I think that our stocker and feeder account with hogs enables our salesmen to effect sales covering a larger num-

ber of head on peak days than if we did not use that account. I think it has a direct bearing in helping to clear when the market, in the terms of the yards, flattens out or on a heavy run. To what extent I am not prepared to say. We use the stocker-feeder account when, in the judgment of the manager or the salesman, the price offered is not what we believe is the full strength of the market and, in order to procure for our members that have shipped to us, the full strength of the market, we make use of the stocker-feeder account. It is correct, in my judgment, that the use of this account of necessity creates a higher performance than it would without it. I suppose it has been difficult to sell and get the price on other markets. Not having operated on Chicago prior to 1929, I could not say what my [fol. 858] previous experience had been, but, in my judgment, about the hardest four years of my livestock experience have been the last four at Chicago. Our difficulties are multiplying rather than decreasing. Naturally, that tends to increase our costs of operation rather than to decrease them. I would not, from my livestock experience, want to make an estimate of the maximum performance of any salesman. I had four cattle salesmen in 1932. If I had thought the amount of livestock sold by the four salesmen should have been done with two or three, I certainly would have dispensed with two, but, in my judgment, those were men who had charge of a particular type and I deemed it justifiable to keep those and dispense with the services of men who did not require such long training in their particular department. We curtail overhead by reducing salaries in 1932 to meet conditions. As to whether our salesmen were reasonably busy in the performance of their service throughout 1932, my personal observation was that they had devoted the required time that was necessary to handle the volume. I might add that their own comment when they came into the office was that they had never worked harder to perform their duties that they had, and sometimes there was a question mark in their mind whether they had maintained their former standards of service.

[fol. 859] Redirect examination:

Over the years of my experience and on a comparative basis, I would say that the condition of the live stock producer today is unprofitable. In 1920 I was operating quite

extensively. I had some very nice profits from feeding operations and grazing and raising. In the latter five years it got where it was not showing much profit and my personal observation since that time is that it has grown worse. I stated that it is generally more expensive for me to operate our agency here at Chicago than was the cases of the houses of the Farmers Union at Omaha and Sioux City. There are several particular items of expense that I recall at this time. In the first place, a salesman on this market is usually able to command a higher salary than on the other markets. I think that is justifiable because salesmen on other markets have a yardstick, so to say, to guide them, and by that I mean they have reports from this market which is looked upon by nearly every salesman as the price-fixing market of the United States. Another reason the methods employed at different terminals, the size of the yards, the proximity to the unloading chutes, while in Sioux City the yard company delivers the livestock to your pens which is not true here; that is one of the large items of expense.

[fol. 860] Our cattle pens, while not the farthest from the railroad unloading chutes, the most direct course, if you are not delayed or made to detour by congestion is approximately one mile, and that is very close because I measured that with the pedometer which records the distance quite accurately. Your office rental is higher, which is a considerable item. Making trips where you are requested to come to the country, the necessity of traveling expense because of the greater distance. There may be some smaller items that enter into this, but I just don't recall. Those are the principal ones that I recall at this time.

[fol. 861] When I said that a reduction in rates might make impossible the extension of services, there are different services that that would affect. As illustration, if the rates do not provide sufficient revenue to make these trips to the country, then they would have to be discontinued, which in turn would reflect detrimentally to the producer of livestock, unless other means of revenue were provided, and if it became necessary to lower salaries to a point where we could not maintain the highest standard of efficiency that we now have, that would be one of the possi-

bilities. There are other services, of course, that it would affect, if you did not have sufficient revenue to maintain and had to bring down your cost of operation in proportion to the earning power. If you had to work your office force frequently overtime or I would say if that became the rule rather than the exception, there would not be the efficiency there that there would be if they were working at a rate that did not overtax their nerves. Necessarily there would be more mistakes creep in if they were working under pressure and long hours, which sometimes are very costly. If this condition arises, in my judgment, the last services to be dispensed with is the salesmen, and if you had to take some of the salesmen away from their duties to make these long trips to bring the livestock to the alley, there might [fol. 862] be a time that he would be absent from his alley when a buyer would be there and he would lose a sale. There are so many different angles to this, it would be difficult to enumerate all of them, but those are the more important ones that I call to mind now. We think the Farmers Union service is up to the standard. As far as I have been able to personally observe the sales and familiarize myself with the prices that others get, I think that our salesmen obtain as good a price for livestock as any other salesmen by and large on the market. I do not know if our salesmen can handle as many livestock as any other salesman on the yards. I have not hired any salesmen since I have been with the firm. As to whether I find that any of our patrons felt that the rates were too high, I think my statement was that the majority of them were not complaining about the rates. I have, however, had now and then a complaint.

As to whether I think a smaller number of firms could handle the business on the Chicago market just as efficiently or more efficiently than they are now handling it, I am somewhat at a loss in answering that question because I don't know the efficiency with which the other firms are operating but I will say this, that if I was justified in adding a larger [fol. 863] personnel that I would be a more factor in determining price, in my judgment, providing the purchasers were not receiving the major portion of their supplies through the direct marketing channels. It would be consistent to good business principles to add to our organization by way of personnel in response to increased volume.

MR. HAROLD SUMMERS, a witness, called by the Government, was recalled to the stand and testified as follows:

Direct examination (continued):

I am the same Mr. Summers who is employed by John Clay Commission Co. and who has heretofore testified in this hearing. When in the country soliciting, I solicit either kind, both rail shipments and truck shipments, but mostly cattle shipments. I presume other market agencies solicit the same shippers that I solicit. I have never run across representatives of other concerns in the field soliciting the same shipment, but probably they have been there after or before I have been there, I don't know. We go to all the shippers who ask us to go out that we can possibly get to. Of course, occasionally there are times when a shipper is away down in the country somewhere that would not be of any benefit to us to go down three or four hundred miles to get one load of cattle, but when anybody wants them to go [fol. 864] within reasonable distance we go out. On these soliciting trips, I would not attempt to appraise other livestock than cattle, because I do not know the market value of them.

I would not say that there was any great deal of difference between the markets of 1933 and 1932 with reference to the difficulty in selling livestock, until about the last two months. We had a little better markets during the last two months than we probably had any time last year.

The packers were a little more active buyers than they were last year. The demand was a little better. I recognize the term "good days" and "bad days"—we call a good day a day when packers and order buyers are active buying cattle on the market, fast on the market, and not dragging along all day. On a bad day, it drags along all day and lots of times you cannot sell some of the cattle which you have and you have to carry them over until the next day. I can give you an example: Take a day like yesterday with a slow market; the market was about 25¢ lower and we had to carry over, I would say approximately about 40 cattle last night in the butcher alley alone. Yesterday we received 18 or 19 loads of butcher stuff. It would average about 30 [fol. 865] head to the load. Two of us worked on them. I did not come in from the yards until about ten minutes to five last night. I sold some few odd cattle right up to 4 or

4:30. That is not to packers but to a few feeders or fellows like that. We do not carry over cattle every day. It may be once a week or once every two weeks. That is, of course, in the butcher stuff. I do not know what they do in the steer alleys, but in the butcher stuff; it runs once a week. We may carry over some cattle in the fall of the year when we get big runs and naturally the market may be rather bad and we may carry some over two or three times a week.

It has not been my experience to carry over cattle on good days. Carrying over happens only on what we call a bad or slow day. The commission man attempts to get a good fill on cattle before offering them for sale, at least we do.

Cross-examination:

I understand that the schedule provides for a different rate where a carload contains cattle and calves than the tariff provides for a carload which contains cattle only. I sell calves as well as butcher stuff.

"Q. Do you believe from your experience in handling butcher stuff, that that distinction or that difference is [fol. 866] justifiable judging from the service that is performed in connection with a carload of straight cattle or a carload containing cattle and calves?

Mr. Miles: Mr. Examiner, that question is objectionable and is objected to on the ground that it calls for an opinion and is a matter of law which only the Secretary can pass upon.

Mr. Boyd: I submit, Mr. Examiner, that the Secretary can only arrive at his conclusions by using the experience of people who are well trained in this business, and if the Secretary can find out any other way than by asking a question of the witness, then I would like to know what it is.

Mr. Miles: No more argument.

The Examiner: Objection overruled.

The Witness: Yes, I do."

I agree with Gene McAdams that the salesmen for John Clay & Co. sold more livestock per salesman by reason of the fact that the business was distributed more evenly or more equally throughout the days of the week because John Clay & Co. had houses at other markets that caused the supply to be more evenly distributed throughout the days

of the week. I think I would concur in Mr. McAdams statement to the effect that during 1932 because of the necessary [fol. 867] liquidation of cattle paper that took place, that our receipts were greater and more evenly distributed throughout the weeks on that class of business.

I never heard a shipper complain about commission charges. I meet and discuss all questions with them in my travels and around the yards, and have traveled over this part of the country without having anybody complain about rates.

Redirect examination:

I would say that John Clay & Co. at Chicago receives butcher cattle to sell from pretty nearly all over the country. It is not from any certain one territory. We get a lot of butcher stuff from Iowa and Illinois, Missouri and Nebraska. We get butcher stuff from Indiana and we have gotten them from Ohio; from Ohio in small quantities.

Mr. Charles Dunbar, a witness called by the Government, was recalled to the stand and testified as follows:

Redirect examination (continued):

I don't think it is true that the vast majority of our cattle are called range cattle, that is, that come from the range country. I could not tell you off hand what proportion of our receipts would be classed as range cattle.

We sold between 17,000 and 18,000 range cattle for 1932 and about the same number for 1931. I do not personally [fol. 868] sell all the steers. There are two of us (salesmen) on the heavy steers and two in the light steers and stockers and feeders and yearlings, four in what we call our steer alley. I do not sell more steers than any one of our salesmen. At the present time Mr. Thomas sells the most and that has been the case since our steer salesman left us a year ago the first of last January.

Recross-examination:

I have frequently been injured in handling cattle in the yards. You are taking a chance every day with your life in a way, unless you are very careful, and it is no uncommon thing for one to be hurt quite severely and still go on with

his duties. He always feels as though he must finish his day's work before he leaves, regardless of how badly he might be injured.

We feel that the two partners' activities in our business are in a large way responsible for the success or failure of our business. I would not think that we could find a man that would fill the position as my brother James does. In fact, as far as my viewpoint is concerned, I think it would be impossible for me to because there are things that we could agree on and do agree on that it would not be possible for me to agree on with an outsider.

In arriving at the worth of an owner, I think it would be an impossible method to find out what he was worth by [fol. 869] just comparing him with what just a salesman would be worth to the firm. There is no comparison between the two. If there is a salesman that sold approximately the same number of hogs on the Chicago market, that is employed and not an owner, I do not think that my brother James' worth to Walters and Dunbar should be found by the amount of money that the hired salesman was making as an employee or as a non-owner of another firm.

I don't think there is anyone that should be even permitted to attempt to make rate, a commission rate, who is not familiar with the business and a partner or owner, or part owner in a commission firm, because it is something that is entirely foreign to it and it is impossible for them to be familiar with what rates should be charged. It would be like taking a cattle salesman down and asking him to sell ribbons in one of these department stores, because, when a man comes in from the outside and attempts to figure out on what basis a commission business should be run on, he is meddling with something that he is not familiar with and never can be unless he gets his years of experience, and, in my opinion, it would be utterly incapable of attempting to make rates of any kind or ruling on the rates as they should be. I agree that the appointment of a committee by the Exchange, of people that are acquainted with the men and the business or are supplied with the information is the best method to arrive at the [fol. 870] value of an owner where the owner himself has failed to state his value and set it up on the books but has only had a drawing account or may not have withdrawn any money in the way of salaries, and in order to fix a

proper salary for him, they use that method. They would be the only ones that I think are capable of determining what the proper salary should be.

Redirect examination:

Q. Do you mean to say, then, that you do not feel qualified to answer whether a partner in firm A would be worth the same or more or less than a partner in firm B?

A. I am qualified to answer in our own business and give you facts, but I do not think that it is any of my business to try to tell you what the other fellow should do, when I am not on the inside and do not know the conditions under which the other fellow is compelled to labor.

I cannot see wherein there should be different rates for different firms because one firm is operating a little more economically than another.

With reference to the use of an appraisal committee for arriving at the salaries of owners engaged in business at [fol. 871] St. Louis; the committee might have known the men and they might know a little something about the business, but I would consider them utterly incompetent to set the earnings of any individual because the earnings of no two individuals are alike in the managing and handling of the livestock commission business.

I don't want to criticise the action of that Exchange but I certainly would not go outside of our own Exchange and outside of a firm to select men to decide or determine the value of those men in their particular line of business because I don't think the outsider is as competent as the men who are on the inside to render a decision of that kind. Then, along with that, I might add that they could be right in assuming that a man that only has 100 dollars a month drawing account is worth more money and that he is drawing less than his value.

HARRY W. WILLIAMS, a witness called by the Government, testified as follows:

Direct examination:

I live at 8100 South Peoria Street. Am an order buyer and trader in hogs on the Chicago Union Stock Yards. I

operate a firm as a partnership. The name of my firm [fol. 872] is Googins and Williams. My partner's name is H. L. Johanesen. Have been operating as a partnership since 1916. Once in a while we get an order for a few lambs to go out with hogs in the same car, but we don't solicit sheep or cattle orders. I have been actively engaged in the livestock business since 1898. I have been active on the market since that time and bought hogs every day that I was here and I have been here the greater part of the time during that period. I first began in the capacity of a yardman, employed by Googins and Williams. This firm was started in 1865 by Mr. Googins and my father. I acted as a yardman for about eight years before they considered me a thoroughly qualified buyer and since that time I have devoted my time to buying entirely. Our firm trades in addition to buying on order to a small extent. Our firm handles all classes of hogs. Our trading is done entirely separate except in this kind of a case: during the busy times we are liable to have a load more than we can load, too much weight, that has to go into the trading account, but we do not aim to mix our order buying with our trading. Our customers are located entirely outside of Chicago. We have no customers in Chicago.

We buy for Cudahy Bros. of Milwaukee, for Oscar Mayer in Madison, Wis. and we buy occasionally for some Michi- [fol. 873] gan points. Our consistent business has been from the states of Ohio, Pennsylvania, New York and the New England states. Our customers give us special orders whenever they want us to buy hogs for them and they come mostly without my solicitation. We know what each customer wants. If they deviate from their regular line, they will specify, but if they just say "ship two cars", we know the class they use, and some of them put limits on at times, that is, the limit of price that they will want us to pay, and some of them do not. I could say as a general rule they do not except recently since the conditions have been changed, and now many, I would say 50 per cent of them, specify that you have to, "If you can buy at four and a half, or whatever the price may be, we can use a car or two."

We begin to operate on the market each day about a quarter to eight. No specified time. My partner also buys hogs. The firm employs one other buyer besides myself

and my partner. To explain how we go about our activities on any day to fill orders, we start out, three of us; each one goes in a different direction, and, of course, before, we are fortified with the run here in Chicago, the receipts, the receipts at the other markets, and in that way we form our judgment about what the market will be. Then we start out [fol. 874] to find the class of hogs that we want and place bids on them at what we think we want to pay. We attempt to buy earlier or wait until order buyers have made their purchases according to conditions.

If the receipts are small at other markets, we go right ahead and buy our hogs, and if the receipts are large at other markets, large at Chicago, we shop around in order to get the most profitable price for our customers, or get the hogs at the lowest possible price. We go according to conditions. At the time we start out in the morning, we do not usually know at that time what our orders are for the day. We somewhat anticipate them in this respect: when conditions are normal, certain firms would order on certain days because the men in the East have certain days on which they slaughter the hogs, and there would be some firms where they have two killing days. We know what the killing days are and we anticipate their order. They hold back the orders sometimes in order to try to locate some place lower than our market.

When we anticipate orders of that kind, we do not go ahead and buy the hogs, generally speaking, but we find out where that class of hogs are so that when the orders come we won't have to go and hunt for the hogs. We know where we can go and start and trade on them.

The other buyers and I usually talk over the prices we will pay for the various grades of hogs, and sometimes our opinions differ, and then we wait to see what the condi- [fol. 875] tions are, who is right. We confer from time to time during the day, quite frequently, to see what the conditions in the other parts of the yards are. If the hogs are lower and more plentiful and better quality in some one division, we will confine most of our activities to that division. Each of us work in a separate division. I usually work in what is known as the Burlington division.

In making purchases, we weigh them direct to the order, sort them from the commission firms or traders, wherever we buy them. We buy them wherever we can get what is

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most suitable for the best price. We usually do not find hogs that are already sorted and suitable to our needs. That requires going into the pens of loads of hogs and picking out the grades that we want. No later than this morning I have already been in seven or eight loads of hogs before I came over here, and ordered the grade I wanted out of these different loads, all of commission men, it happens this morning, because the traders did not have anything I wanted. Each one of us sorts as a rule. The commission man's representative holds the gate or the commission man, a good many times, the salesman, holds the gate. The kind I want I sort out and they are put into another pen before they *the* weighed, of course, and fed. The commis-
[fol. 876] sion firm weighs them. We give them the name they should be weighed to. We do not have anything to do with the hogs after that; as far as the physical handling of them is concerned, they are handled by the Union Stock Yard & Transit Co. but we watch and see that they are put into suitable pens. In other words, on a day like today, we watch to see that they are put in a pen where they won't become overheated, and in bad, raining weather, we watch to see that they are put in a dry pen where they are not half drowned and cause them to shrink, and in the winter time we watch to see that they are put in pens that are not full of snow and sleet, but all the time the hogs are in charge of the Yard Co. and they are under lock and key of the Yard Co. We have nothing to do with that, only that we insist that they be put in suitable pens. We do not employ other help in these yards besides buyers at the present time. When conditions were normal we used to have a couple of yard boys. Yes, I will explain what I mean by normal. At the present time, our customers are buying a good many hogs at country points because they claim that the good hogs are not shipped out of the country points, they are shipped direct, and the poorer hogs come to Chicago, and that necessitates, at the present time, a lot of sorting which we did not have to do when times were normal. In other words, like this morning, I sorted seven loads of hogs. Under normal conditions I could go out and buy straight loads of good hogs with the exception perhaps of a hog or two out.

[fol. 877] Now I go in, and like this morning I got 15 hogs out of one load, ten out of another, and so forth, and then

I ask the farmer: "Where are your good hogs that you used to have?" "Why, we are shipping them there. These are the tail ends." I have to buy the tail ends and make the best of it, or buy the best of the tail ends. I located one farmer last week that told me he shipped 15 loads of good hogs to one of my customers and the tail ends to Chicago. We needed yardmen formerly but do not need them now. It is because we have less volume to handle. The last yard man I let go last fall about November. We do our own yard work, the three buyers. One other of the firm receives orders for hogs which they turn over to us. We handle that on half commission and they finance it. We do not assume any financial responsibility on them. We do not do any bookkeeping on them, only just to keep a card record so that we can refer to it should anything come up. That firm is J. D. Kellar & Son. We do not receive any orders from the regular commission firms on the market. Most of our orders are for double decks, very few single decks. There is nothing peculiar about an order for a single deck. There are a few butchers in the East that do not care to handle so many hogs as a double deck at a time.

As a rule, there is more work to a single deck because that man will probably want several kinds of hogs. He [fol. 878] will want a few of this kind and a few of that kind, and it necessitates more work, more sorting than for a man who is buying a separate load of one class. We make no difference in our charge when a man orders a single deck of one kind or a single deck of a little different kind. There are particular classes of hogs that require more work on our part than other classes. On pigs and sows we have to pick up a few at a time, sometimes one or two or three or four at a time, where, in buying hogs, weighing 150 to 300 pounds, we can pick them up in larger bunches. The further work that is required on the part of our firm in connection with the orders, we have to order the hogs over, see that they are handled by the Stock Yards Co. without being bruised, see that there are no mixes or chances of mixes, see that we get the proper hogs, we inspect the hogs as they come into the chutes, see that the cars are properly bedded, and that the hogs are sent away in A-1 condition, and also that the man pays up promptly, pays our bank for the hogs. Some of our customers have different ways of paying for them: On

some of them there is draft on them with a bill of lading attached. Other people wire the money as soon as they get a wire from us, the amount, and other firms have money right here in the stock yards banks that I have the right to sign, so-called pink tickets, and I dare say when Cudahy Bros. were buying in large volumes some two years ago, [fol. 879] they used to send the money here and anticipate what they would buy and have the money sent out to my account. We telegraph our customer as soon as we have filled an order for him. Generally we say, so many head cost so much, average so much, and, if the bank is making a draft on him, we don't specify the amount of money, but if he is remitting by return telegraph to Federal Reserve; mostly we specify the amount of money in that telegram. We do not pay for those telegrams, the customer pays for them. We do not charge exchange where we have to wait until the customer remits to us through the Federal Reserve Bank. We do not have anybody on our list who is not prompt in making their payments. Where we draw drafts with bill of lading attached, we are given credit for that as soon as we put it in the bank. The bank here have a rating on everybody in the East that buys stuff here and if they think that a man is not qualified to pay that draft, they won't accept the draft. We have had no difficulty in that connection. The efforts made by us to obtain customers, we write letters and send them a card giving our quotations, or if we think that it is extra favorable, we will send them a telegram, but most of our business, our business has changed a good deal, our customers have changed a good deal in all that long period of years. Many who [fol. 880] were in business heretofore are not in business, but most of our business has been made, I would say, is where one man in the East recommended us to another.

We send out postcards to our regular customers, giving prices, just an ordinary postcard, but on that we have pigs of a certain weight, 200 pound hogs, 225, 250, and fill them in with ink. We aim to send them out once or twice a week. Of course, according to market conditions, when our market is out of line we do not send them as frequently as when we are in line. When we are in line and feel that they can afford to buy them, ought to buy here, we send quotations more frequently, but there are certain times of

the year, under the best conditions, when our market would be more or less out of line with Eastern markets, and then we are not so frequent with the cards.

We employed our buyer in 1915; during the war I had an extra one or two extra men. Since the war we have not had any extra men. On days when we have no orders we buy hogs for the sole purpose of trading on them. If we can see something that we think we could trade in and make a dollar, we would, but not when we have orders. On hogs we have bought for trading, most of the time, we have commission firms sell them for us; most of the time we do not [fol. 881] sell them on the day of purchase but carry them over. We try to get orders for them on the original ticket and if the orders do not come, and the market is over, and they are not our property, as far as shipping is concerned, and we sort them up and put them out to be sold as fresh the next day on our shipping orders. As to what time we complete our purchases in order to get the hogs shipped out that day, it depends on market conditions, whether it is a slow or a fast market. Many days we are out there buying at two o'clock and have bought hogs later than that. We always aim to ship them out the same day we buy them. We have one person at present in our office. I help him with the book work in the afternoon if we are busy and we have a big day. As a rule our orders are scattered over the week. We have orders to fill each day most of the time. I stated that I have already filled some orders this morning. When I left the office we had orders for two double decks and we had other people to write in for quotations which might come back to me. I did not go ahead and buy hogs anticipating those orders. I bought seven or eight loads today for an actual order. When purchased they amounted to two double decks. I bought part of them and my partner bought part of them. They were all of one class. I have not bought any hogs today on a trading basis or in anticipation of an order. The limit there is to the number of hogs that a buyer can buy on a day depends [fol. 882] on the run or the receipts, depending on the receipts and the quality, that would affect my ability to buy, when there are large receipts. You can go ahead and buy a large number of hogs, and if the quality happens to run good, and most of the time order buyers want the good ones, it makes it easier work so that they could buy more

hogs. We don't discriminate between rail receipts or truck receipts in filling orders. We go by quality. We will buy trader hogs just as quickly as we will buy from anybody else. And the question as to whether other things are equal depends upon the quality and price. I have never bought hogs on orders to be shipped by truck.

Cross-examination:

The order buyers at Chicago represent usually the slaughterers of hogs that have their plants East or South of Chicago, mostly East. With the exception, of course, at times, I buy for those two Wisconsin houses.

I do for the persons that I represent a similar service what the packer buyer on a salary at Chicago does for his employer. Practically all of my business is for the packers of the country. I have nothing to do with producers or raisers of hogs. I have never had a complaint from packers that I represent in Chicago, but some years ago we used to buy them for $5.00 a car and several of them told me they didn't want them bought so cheap, that they didn't [fol. 883] think I was getting sufficient for my services, and one fellow when I bought them for $5.00, insisted that I charge him $8.00. He said: "I don't expect you to perform that service and perform it honestly for $5.00, and I want you to charge me $8.00." Since we have been charging $10.00, I have never had any one of them complain about the charge or intimate that our charge was exorbitant. All of our charges are borne by the packing industry.

Redirect examination:

The time that the incident occurred when my customer wanted me to charge $8.00 was twenty years ago or more. Mr. Klinck of Buffalo told me to charge him $8.00 and Mr. Niles at Boston told me that $5.00 was too small an amount. He said: "You are not being properly compensated for your work and the amount of work that you do." They came around here and watched the way we worked and the hours we put in waiting until the cars were loaded and all that sort of thing at night, and were out here in the morning at six or six thirty to give them any information that might come up. That, since, has become the Hy-Grade Packing Co. It is now a corporation. I have actually personally sold hogs in which I trade at times.

"Q. Is there any difference in the problem of a man when he is acting as a salesman and when he is acting as a buyer? [fol. 884] A. Just how do you mean that?

Q. Well, is there any difference in the work required of a salesman as compared with the work required of a buyer? Just what is the difference? Can a man sell as easily as he can buy, or buy as easily as he can sell?

A. That is a hard question to answer; it depends on market conditions.

Q. Now will you explain that?

A. When the conditions, in other words, when the market is strong, the salesman's work becomes easier and he can extend his time letting loose of the hogs more than he can if the conditions are not strong, and then a buyer the same way, just the reverse.

Q. Just what do you mean by extending time for letting loose?

A. Extending time in which to sell the hogs. You understand that a salesman will ask you more than he expects to get, and then the buyer bids him. Well, he might wait too long. Somebody else might sell that buyer all he wants or several fellows might sell him all he wants, and [fol. 885] that salesman, if the market weakens one bit, he won't be able to get back to that bid, while if the conditions at the market are strong, the conditions are just the reverse.

Q. Do you think, then, that the buyer has an easier time when the salesman is having his worst time, and vice versa?

A. It just depends on conditions.

The Witness: The salesman has more responsibility than the buyer in this respect. The salesman, if he performs his duty like he should, he should be out there watching to see that his hogs come up to him in proper shape, that they are handled properly, then he has got, as I see it, I am not an expert on selling hogs, understand, but as I see it, he has got that country customer to please, and many times I suppose those fellows over-rate their hogs. I know they do. They have come back kicking to me that I have bought them too cheap when I have given them a strong market price. The farmers kick, the shippers kick, and really [fol. 886] the salesman has more to contend with than the buyer for that reason: That—this is just my view—I am not saying this as an expert,—but, a buyer has a better

posted class of men to deal with and a good many of those fellows in the country over-estimate the quality of their stuff and frequently commission men have come to me with kicks that were wholly unjust in my way of thinking. The men have made a terrific kick about the sale that he made perhaps to me and wanted to know what my version of it was. He has got to watch his fill and all those sorts of things that, of course, we watch on the other side too, but we have got a different class of people to do business with."

Our customers check up on the quality of service we render and advise us as to whether we bought them about right. We get reports from most all purchasers. We request that information as a rule. We request them to give us how the stuff killed out, if there is any bruised stuff, what percentage of yield, we want to know that for several reasons. It helps us in making future purchases.

With reference to communicating that information to [fol. 887] the salesman, we do like they do in the East. We let him know the bad part of it, and the good part we don't let him know because it might hurt us in making future purchases. If a certain man's hogs kill out extraordinarily good, we are not going to tell that salesman. He is going to use that to raise the price on us the next time. We would be hurting ourselves if we did that. We give out as little information as possible, in other words. We endeavor to buy them as low as we can in making purchases.

Cross-examination:

We don't give the salesman any information that will make his job any easier because he would use it against us. We are out there to get what we can for our customer as cheap as we can. We give him the bad news. The good news we keep to ourselves.

Mr. John J. Bachmann, a witness called by the Government, testified as follows:

Direct examination:

I reside in Washington, D. C. Chief Accountant, Packers and Stockyards Division, Bureau of Animal Industry,

Department of Agriculture. I have been an accountant for that division for four and one-half years.

I am a college graduate, took four years graduate work, one in philosophy and medicine, one in law and two in [fol. 888] accounting. St. Thomas College of St. Paul; St. Paul Seminary; St. Paul College of Law and La Salle Extension University. I taught accounting and other business subjects in three different schools in the Twin Cities for a period of six years and was Dean of the School of Accounting in one of those schools for a period of two and a half years. For practical experience I first went to work for the St. Paul Gas Light Company in the Accounting Division in 1916. I was with them for about six months. I then went to work in the accounting department of the St. Paul Water Department. I was in that department for a year and a half as assistant to the chief accountant, spending a part of my time in the Army, and came back and went into public practice as an accountant until 1920, when I went to work for Bishop-Brissman & Company, certified public accountants, having offices in a number of different cities in the Northwest territory. I was with them until 1924 when I received my own certificate and went to practice on my own account. During my experience in public accounting or during the period that I spent in public accounting, I made supervised audits, some of the larger ones being the Bank of North Dakota, State Mill of North Dakota, other projects in that same State, some of the larger municipalities in the State of Minnesota, both the City Water Department and Light Depart- [fol. 889] ment, the Mayo Clinic at Rochester, the Kahler Corporation at Rochester, other large industrial concerns in the territory. I was chief accountant for the City of St. Paul for two and a half years, acting in an advisory capacity, to the counsel of that city on all matters of finance and accounting, acted as auditor for the State of Minnesota for a period of eight years, covering a period of eight years. Also made a statistical analysis of cost of handling of about 55 to 60 different lines of commodities for the General Electric Company, covering five branches, one in St. Paul, one in Minneapolis, one in Boston, one in New Orleans, and one on the Pacific Coast. That study was similar to the one made here, but was made for a different purpose, the purpose being the adjustment of trade dis-

count and other questions pertaining to the same nature between manufacturers and jobbers of electrical supply lines. Made and supervised audits in numerous other concerns in and about the territory of the Twin Cities. Since coming with the Packers and Stockyards Division, I have been engaged on stockyards audits and rate cases at Nashville, Tennessee, St. Louis, Missouri, Kansas City, Missouri, Denver, Colorado, St. Joe, Missouri, Omaha, Nebraska, Sioux City, Iowa, and on commission rate cases at St. Louis, Missouri, Kansas City, Missouri, Denver, Colorado, St. Joe, Missouri, St. Paul, Minnesota and Chicago, [fol. 890] Illinois. And by St. Louis, Missouri, I mean the National Stock Yards at East St. Louis, Illinois. I have also, in that period of time, been engaged in auditing Seed Loan Division for the Department of Agriculture in Memphis, Tennessee, and in construkting a system of accounts for the Crop Control Division, covering the cities of Washington, D. C. Minneapolis, Grand Forks, St. Louis, Dallas, Texas and Memphis, Tennessee. I hold a degree from my school and also the degree of Certified Public Accountant from Minnesota, and have qualified for membership in the American Institute of Accountants, the Minnesota Society of Certified Public Accountants, the American Association of University Instructors in Accounting, and the National Association of Cost Accountants.

The nature of my duties when in the Washington office, is general supervision of all accounting matters for the Packers and Stockyards Division, dealing with rate hearings and with the gathering of statistics pertaining to the livestock industry.

I have made or caused to have made under my direction an audit of the various market agencies, respondents in the present case and doing business on the Chicago Stockyards.

As to the time which was required for the preparation [fol. 891] of the work done, I believe Mr. Svoboda and I came to Chicago some time about the middle of September, 1932, and from then on our assistants were delegated to this work, and they arrived subsequent to that time in ones and twos, and some times possibly more than that would arrive at some date subsequent to September 15. The people on this audit range from high grade clerks to senior accountants. I was not constantly in Chicago during

the preparation of these reports and audits. I was in Chicago for just a short period of time in September, returned again in November, early in November, and remained until about the middle of December, returned again Christmas Eve, and was here until the early part of January, returned again in February and remained here until the completion of the work, some time shortly after the middle of March. Although out of the city of Chicago, I was in general supervision of the work at that time. Whenever any questions arose which presented difficulty to the accountant in immediate charge, and which were not covered by general instructions which had been issued, the matters were taken up with me by mail, and the decision was left to me to make, and I, of course, received at all times, while I was away, progress reports which covered not only the progress but also any comments on problems which presented themselves to those who were working on the job and if it required any action on my part, I would take such action.

[fol. 892] By the term "instructions" I refer to an exhibit that has already been introduced as a Government Exhibit.

As a result of the work which my assistants and I have prepared, I am now prepared to present various papers which we will call exhibits.

I will take, first, what we call the statistical study of operations for the commission firms who are respondents in this case, Government Exhibit No. 49.

A copy of all sheets in this exhibit, except those covering the two cooperatives, were given to the accountant representing the Exchange members in March of this year. The cooperatives were given the sheets which applied to them shortly thereafter. A copy of the order buyers' cost study was given to the secretary of that Exchange about the first of April, this year, and I think a copy of the commission men's cost study or statistical study has been made available to Mr. O'Bryan since we have been here, and I think also a copy of the order buyers' cost study has been made available to Mr. Boyd since being here.

Government Exhibit No. 49 is a statistical study of the unit operations of the commission firms who are respondents in this case. When I use the term "statistical study of unit income and cost," I mean this: That the income and

[fol. 893] the costs are classified as closely as possible in a uniform way and reduced to a unit basis. In making a study of that kind, it is apparent that we must first then have units which should be as comparable as possible, and that the income and the cost of all firms should be made to correspond to a classification insofar as it is possible to make them correspond. Now, this study does not attempt to determine nor did we attempt to determine what reasonable costs are or what reasonable income is, but we took the income which we found on the books, we took the costs which we found on the books, and we took the volume that we determined from the records of the various companies and made some adjustments. However, we did not, as I stated heretofore, attempt to derive from those figures what reasonable income nor what reasonable costs are.

These adjustments are included in this study and I will discuss them when we come to that particular part of the study.

I wish also to make this clear, that this study is a tentative study and that the adjustments therein are tentative because we in the accounting division of the Packers and Stockyards Administration have nothing to say as to what final determination should be made by way of adjustments of costs or income, but we have used our judgment in trying to make those adjustments conform with the decision of [fol. 894] the Court in the Omaha case, and with decisions of the Secretary made in cases heretofore. Final adjudication, of course, on all of these matters is, as we view it, up to the Secretary. Also, it is up to him the question as to whether or not the methods of cost which we have used are sound or whether or not they are to be modified, in the light of all the testimony which is to be presented in this case. The form of the study has been drawn up to give the Secretary whatever information we could gather which will assist him in arriving at reasonable costs and in drawing up this form; we had in mind the Omaha case and the orders which have been issued by the Secretary on other commission rate cases since that time.

Specifically referring to the exhibit, the first part of it, of course, contains a letter of transmittal and an index of the firms arranged alphabetically and another index arranged numerically. The next contains an index of the various statements which are included in the study itself;

and on page 1, numbered page 1, will be found the auditors and tabulators who were assigned to the various market agencies covering all firms and all employees who may have at one time or another been engaged in drawing off the information from the particular firm's books and records. That list of auditors and tabulators covers pages 1 to 6. The next subject in the study that I will discuss is [fol. 895] the question of units. Being a unit study, we must determine the number of units and the kind of units we are going to use in making the study. The units which readily present themselves in the commission business are cars, decks and head. Now, we find that some of the receipts do not reach the market in carlots. We find that there are single deck lots and double deck lots. The first question that arises then is how we are going to reduce those receipts which do not come to the market in carlots and deck lots to a carlot equivalent or a deck lot equivalent. There are a number of ways in which such a conversion can be made. We could use the market average as used by the stockyard company. We could use the single deck equivalent for each firm separately, or for all firms averaged, or we could use double deck lot experience for each firm separately, or all firms averaged.

Now, the letter of transmittal indicates how the receipts other than carlot were reduced to an equivalent carlot, and I will read some of that letter of transmittal: "The measure used in converting receipts other than rail to an equivalent car unit was the approximate single deck experience of each separate firm for straight rail consignments applied to the species hogs and sheep. The car units so determined have been employed throughout the study. [fol. 896] There is included, however, a second cost determination for the species hogs and sheep, in which has been applied as the unit the same equivalent receipts converted on a basis of approximate single and double deck straight rail experience." These calculations are shown on pages 43 and 48. To make that more clear, we used for the study as a whole the approximate single deck carlot experience of all firms separately, that is, each firm's experience was applied to that firm's receipts coming other than carlot.

In addition to that, there was made a separate calculation for the species hogs and sheep for each firm separately, a unit study of costs, in which the units used for

receipts other than rail were reduced to a carlot basis on the experience of each firm separately, that experience being single and double deck straight rail experience.

The volume pages in this study run from pages 184 to 240 inclusive.

The next section is the income section. That is covered from pages 133 to 183. It shows the recapitulation of the selling and buying commissions by species, by mode, reduced to a unit basis.

I will next take up the adjustments which have been made between the blue audits and this study. Those ad- [fol. 897] justments will be found from page 49 to page 60. Reference to page 49 will show in the last column to the right the net profit per audits, in other words, the net profit or loss which is shown in the blue audits heretofore introduced as Government Exhibit 15. In the middle of page 49 will be found two columns headed "Per Cost Study," "Net Per Cost Study" that represents the net gain or the net loss of the same firms after the adjustments which we made have been taken into consideration. The adjustments are shown on the same page under the heading of eliminations and additions, three columns, one of which covers the income eliminations, the next covers the expense eliminations and the third covers the expense additions. In other words, between the audits, Government Exhibit 15 and this cost study, there were adjustments made which are represented in total by the three columns "Eliminations and Additions" and each one of those three columns is covered by other statements shown herein which will give the details as to the income and expense adjustments.

The first eight columns from the left on page 49 will show the total amount of income and expenses which were considered in this study in arriving at a unit basis.

To take up the first income eliminations, which will be found on pages 52 to 54, the first item of income eliminations is country commissions, which includes commissions which the respondents received buying or selling [fol. 898] livestock in the country which did not come to the market. The reason that that is eliminated is that according to my understanding, it is not subject to Government regulation and not being subject to Government regulation, we have eliminated it from our unit determination.

The next column "Commission and Traders' Clearance Charges", those charges are financing charges and being financing charges, and as financing charges according to my understanding are not the subject of regulation in this proceeding, we have also eliminated that particular part of the income. The next column "Interest and Collection Income", a separate allowance has been made in this study for interest income on the fixed capital used in the commission business. There has, in addition to that, been allowed a fund for working capital purposes on which, according to my understanding, an interest allowance is to be made which is to be carried into the rates. There has been in this study no allowance made for the buying and selling of livestock, that is, the financing of the buying and selling of livestock, and for that reason, both the income from interest and collection charges and the expense of interest and collection have been eliminated.

The next column covers Miscellaneous Income Eliminations. The nature of the items shown under that heading [fol. 899] are, in general, as follows: Insurance dividends on the lives of certain officers of the company, income from hog futures, sale of capital assets, profit derived from that financing service, farm income, any income derived from sources which are not strictly derived from the purchase and sale of livestock. Commission on Loan Contracts is another item included in that column, and those general classes will cover about all of the items shown under the heading of Miscellaneous Income Eliminations which total $2,829.05. The next statement is the expense eliminations shown on pages 55 to 57. The first two columns from the left cover the elimination of salaries for clearance and loan business, insofar as that business is not strictly essential to and has nothing to do with the actual selling and buying of livestock on the market, but is extraneous to that selling and buying. Any expenses which have to do with the handling of such clearance and loan business has been eliminated. The amount of such elimination is shown for each firm separately and for all firms combined in the first and second columns of pages 55 and 57. The third column from the left, "Depreciation Auto", the fourth column, "Depreciation Furniture and Fixtures", the tenth column [fol. 900] "Depreciation of Stores". The items shown under the headings indicated are adjustments. What I

mean by that is this: in those cases where the company itself had set up on its book a certain amount for depreciation for those particular assets. We made an entirely new calculation for depreciation, which will be explained hereafter, and, in so far as that the amount on the books should not correspond with the amount which we determined in our calculation, adjustment was necessary to make the amount shown on the books conform with our calculation. The next column, which is the fifth from the left on page 56 to 57 is Charity and Donations. That covers all the donations made by these various firms for charitable purposes. The reason for the elimination is this: that if these firms desire and feel it advisable to make charitable donations, that they themselves should make them and they should not attempt or be permitted to pass them on to the rate payer.

If charity and donations is allowed as a reasonable expense and is carried into the rates, the effect is apparent. That is, that the shipper pays the donation and not the firm who made the decision and made the donation. The next column is "Bad Debts for Loan". All expenses or income which has been derived from the loan business, have, for the purpose of this study, been eliminated as not being subject to regulation and not being a part of the commission [fol. 901] business, as such. It is extraneous to the commission business.

The next column, "Personal Life Insurance," indicates the reason why it was eliminated. It is life insurance on the lives of certain of the officers of certain of the companies and being a personal expense item, it should not, in our opinion, be carried into the rates. We did not go into the feature whether the insurance is payable to the beneficiaries of the insured or to the firm itself, but from previous investigations I have made in similar situations, in some cases, they are payable to the firm; in some cases they are payable to other members of the firm; in some cases, are not payable either to the firm or to a member of the firm, but to a personal beneficiary.

I speak not for the Department nor for the Secretary, but purely from my own viewpoint. In my statement that I was guided by the Omaha decision and subsequent orders of the Secretary, I had this in mind: I have, of course, read those decisions, and have tried to outline the data contained in this study approximately in line with the information

which was used in those decisions and have tried to conform the information here to those decisions as much as I could.

The next column, "Interest and Exchange Bank Service", it is the expense side of the same item which I dis- [fol. 902] cussed under the Elimination of Income, and the reason for the elimination of the expense is the same as that given for the Elimination of the Income.

The next column is headed "Miscellaneous". The nature of the expenses classified under the heading of Miscellaneous, are, in general, loan expenses, loan, travel, club dues, membership transfer fees, legal expenses on account of loans, Exchange fines, financing service, Investment items, write-off of good will, branch office, depreciation on memberships, organization expense, audit for rate hearing, two items shown under that heading, and two items covering firms not in item 100 for that purpose.

The next column, depreciation horses, depreciation on horses has been explained heretofore. Exchange dues does not cover all Exchange dues which are paid into the Exchange. A part of those Exchange dues have been allowed under the heading of "Administrative and General Expenses". The portion which is eliminated on pages 55 to 57 covers the assessment which was made in 1932 for the conduct of the rate hearing. My position on that is this: I believe that an item of that kind should not be allowed in total for the year that it is incurred, should be amortized over a period of time. In at least one other decision that the Secretary made heretofore, he has overruled me in my [fol. 903] contention, and I have, therefore, set the item out as an elimination until a decision of the Secretary in that particular respect is changed if that may occur in the future.

The next column, "Investment" in some cases, we found where some of the companies had charged the purchases of furniture and fixtures as an expense for the year. Those items being in the nature of capital investment were eliminated as an expense item. Outside operations, expenses, cover the operation of farms, and I think in one or two cases possibly, real estate which is no part of the commission business as such. The next three columns "Furniture and Fixtures", "Insurance", "Mortgage and Theft Insurance", "Workmen's Total Compensation Insurance", rep-

resents adjustments, and what I mean by that is this: that in some cases some of the companies carry insurance in the nature of fire insurance, on furniture and fixtures, or mortgage and theft insurance, or workmen's compensation insurance. We recalculated that insurance on the basis rates furnished to us by the Secretary of the Exchange, which he had received from an insurance company. The letter was signed by Mr. J. W. Werner, Assistant Manager of the Hartford Fire Insurance Company, Chicago, Illinois. The letter of Mr. Werner covers the item of Workmen's Compensation Insurance and Public Liability Insurance. We made no adjustment for the public liability insurance.

Last night when we stopped, we were discussing the insurance adjustment shown on page 55 of Exhibit 49. Ad-
[fol. 904] justments for furniture and fixtures, mortgage and theft insurance, and compensation insurance were made in all cases where an increased amount was necessary, or where the amount shown on the books was greater than the recalculation showed that it should be. Now, where the amount was greater on the books than the calculation showed that it should be, the reason for that was mainly over-lapping, that is, the policy would run from somewhere from a date in the calendar year to some date in the next calendar year and would not be on the calendar—the payment would not be made on a calendar year basis. Our calculation here is made on a calendar year basis. The first adjustment is Furniture and Fixture insurance. We accepted the rate shown in the letter which I mentioned yesterday and applied that rate on an 80% co-insurance basis to the sound value of the fixed assets as determined by Mr. Henrici in his appraisal. The next item, Mortgage and Theft Insurance, was adjusted on the basis of the rate specified in Mr. Werner's letter, effective from July 1st, 1932, that is, 7½ cents. All the head were reduced to a standard carlot basis as set out in the letter of Mr. Werner. The Workmen's Compensation Insurance, the rate used for adjustment was the rate specified by Mr. Werner, effective August 1st, 1932. That is 9¢ per $100 of payroll for office workers, and $1.34 for $100 of payroll for yard workers applied to the non-owner's salary for the year 1932. I believe that completes the discussion of the elimination of expenses.

[fol. 905] The next will be expense addition shown on page- 58, 59, and 60, for each firm separately. The first two columns from the left, salaries, loan business, and so forth, owners and non-owners, represent items of profit which were substituted or included as owners' compensation where no other owners' compensation was shown on these blue audits. I wish to make this statement about owners' salaries. We do not in any way attempt to set out what owners' compensation per unit or in total should be. Wherever we found that the firm had placed an owner on a salary or on a drawing account basis, we used that amount as the owners' compensation. Where no owners' compensation was shown on the books, we put in the amount of profit in lieu of salary or drawing account. Where no profit nor salary was shown for an owner, there was not included any compensation for that owner, although on the questionnaires the owners were shown as rendering service. As I stated before, we in no way attempt to set out what the fair compensation of an owner should be, and I appreciate fully that with respect to the owner's income, this study may be incomplete insofar as there may be individuals who have no salary or profit assigned to them as compensation for whatever service they may have rendered.

The next three columns take up Depreciation of Auto, Depreciation of Furniture and Fixtures, Depreciation of [fol. 906] Horses. In numerous cases the firms did not take on their books an allowance for depreciation covering those assets. We recalculated the depreciation, using as a base Mr. Henrici's appraisal, and taking from that the reproduction new values as the base and using as the rate or the life of the assets, the following years: for office furniture and equipment, ten years; office fixtures, 20 years; automobile, 4 years; horses and saddle, 8 years; yard buildings, 20 years. That recalculation will be found on pages 97 to 99. That represents a calculation under the straight line method of calculation. Studies which I have made in the past on the question of depreciation have led me to the conclusion that the straight line method is in general not very close in conformity with actual depreciation sustained. For that reason, and for the further reason that I believe that the sinking fund method comes closer to the actual facts as to the actual depreciation sustained, we have adjusted the straight line calculation to conform to a sinking

fund calculation as shown on pages 100 to 102, and the adjustments which were made for depreciation in this study are the difference between the amounts shown on the books and the sinking fund calculation, and there was either an increase in the depreciation allowance or a decrease in the depreciation allowance for the amount of difference between the depreciation shown on the books and taken into this study. The amount of such increase or decrease would of course, be shown in the adjustment sheets which I have been discussing. The same comment which was made for [fol. 907] depreciation on auto, furniture and fixtures, and horses will apply for the second last column from the right "depreciation, yard buildings".

The next three columns cover the insurance adjustment for furniture and fixtures, mortgage and theft and workmen's compensation. These represent the additions made to expense which are the direct offset of the same items discussed under expense eliminations heretofore. That covers the total adjustments made for the purposes of this cost study. After the adjustments have been made, the next step is to reclassify and recapitulate the expenses by functions, and we divide expenses first into salary expenses and non-salary expenses. The salary expense recap will be found on pages 61 to 63, and the details will be found in the pages following up to and including page 78. The division of salaries into the various functions or into the various services which were performed by the separate individuals was effected through a set of statements which we will call the salary questionnaire. This salary questionnaire is a joint piece of work, and when I say that, I mean this: a part of the work was done by ourselves and a part of the work was done by the accountant representing the Respondents who are members of the Exchange and who also represented the Producers Commission Company.

I will take the set of sheets covering the first firm and will describe the particular part of the work which was done [fol. 908] by us and the part of the work which was done by Mr. Mudd. The second sheet of Firm No. 1 shows the names of the various employees and number designation, whether they are owners or employees, what their main duties are, the time worked, the compensation shown on the blue audits which that individual received, and the adjust-

ment which was made for owners for salaries by way of profits where no actual salary allowance or withdrawal allowance had been shown on the blue audits. All of that work was done by us. In addition to that, after Mr. Mudd had placed upon these sheets the distribution of the time devoted to the various services by each individual, we also made the distribution of the salaries in accordance with the time distribution and we made the recap of the salary distribution by functions. The remainder of the work on these questionnaires was done by Mr. Mudd and his assistants. The conferences held with the owners of the various firms or the representatives of the various firms during which the distribution of time was determined was done entirely by Mr. Mudd and we accepted it as correct. This questionnaire, as I have stated, is the basis for the distribution of all owners' and non-owners' salaries and wages to functions or services rendered.

I have marked these questionnaires, Government Exhibit No. 50 for identification.

The recapitulation of expenses other than salaries are shown from pages 79 to 93. The functional designation of [fol. 909] these expenses is business getting and maintaining expense, office expense, yarding expense, administrative and general expenses, and risk items. The various kinds and classes of expenses which are included under these main designations will be shown or will be found on those pages. There are not included in the unit determination of costs interest on estimated capital requirements. However, I have always maintained the position that in determining reasonable costs and allowance for interest on estimated capital, requirements should be made and for that reason I have made a calculation of what in my opinion should be the allowance for that item, which will be found on pages 94 to 95. The first column shows the sound value of the depreciable assets as taken from Mr. Henrici's appraisal and covers all depreciable assets as shown in Mr. Henrici's exhibit. The next item, that is, cash working allowance, represents approximately 1/12 of the total expenses of the firm as recapped on pages 49 to 51. That is the column headed "Total expense per cost study". That cash working allowance covers only that part of the cash which is necessary for the operations of the business without the factor of financing the selling and buying of live-

stock. In other words, it is intended to cover only expenses, the necessary expenses of carrying on the business and I feel that one month advance allowance in general is sufficient. The next column "Other assets deferred", and so [fol. 910] on, represents supplies inventories of various kinds, that is stationery, and the various supplies that are used in the yards for driving purposes. The next column, "Live Stock Exchange Memberships", are included at $750 a membership. The interest rate used here for the amount which should be allowed in gross is seven percent and that seven percent is applied to the total estimated requirements. The amount of allowance is determined in that way and the number of cars is divided into the total allowance to get the per car estimated allowance.

The next subject is the distribution of expenses to species. The distribution, as made, will be found on pages 106 to 132. The expenses were allocated to species directly wherever possible. What I mean by that is this: where it could be clearly shown that an expense was incurred in handling one particular species of livestock, the expense was applied directly to the handling of that particular species. As an example, horse and saddle expense is used in the cattle alley or the cattle yards only, and the amount of that expense was all applied to the handling of the species of cattle and calves, and that practice, in so far as we were concerned, was followed throughout; wherever an item was clearly applicable to a particular species it was so allocated. That took care of somewhat over 60 percent of the expenses. For the remainder, we could not clearly and directly apply that amount to a particular species and some method of indirect allocation had to be provided. The first expense for [fol. 911] which such a method of indirect allocation had to be provided was the office and administrative salaries.

For that particular expense, the basis for distribution of indirect expenses was number of account sales, number of owners and number of drafts by species, which analysis by species was taken from the account sales. The next expense for which an indirect method of distribution had to be provided, a part of it was business getting and maintaining salaries. The method adopted was the commissions less the commissions which had been received for seconds. I mean gross commissions.

The next expense, business-getting and maintaining expense, in distinction to salaries, the same method was used for the non-salary expense as was used for the salary expense. Non-salary expense, the same basis was used for that as was used for office salaries. Yarding expense, non-salary, the basis used for distribution of the indirect portion was drafts. Administration and general expenses, non-salary, basis for distribution of that to species was account sales and purchase, owners and drafts. Risk items, the indirect portion of that expense was allocated to species on the basis of head times average value for the year, as taken from the Drovers Journal. The average value used was $40 for cattle and calves, $12 for hogs and $6 for sheep. On pages 103, 104 and 105 will be found a calculation which has [fol. 912] not been described, which is a test of what proportion of the gross income is spent for business-getting and maintaining. The gross income column there shows the amount of gross income with the seconds eliminated, that is, with the income derived from seconds eliminated. The reason that is put in here is because the question has been frequently asked me what percent of the gross income do these various firms spend for getting business, and to answer that question, this calculation has been made. After the distribution of all expenses has been made to species, they were then brought together and the unit calculation was made for them. This unit calculation will be found from page 16 to page 48. On pages 16, 17 and 18, it shows the total expenses which refers to the total taken into this study only. It covers both salary and non-salary expenses. Pages 19, 20 and 21 for the species cattle and calves takes in the unit calculation for salaries, and 22, 23 and 24 take in the unit calculation for non-salaries. The same procedure has been followed for the other species, the unit calculation of income and cost is then brought together and compared on pages 7 to 15. The reason for those comparisons is this: to determine if possible, whether the tariff has been properly balanced. What I mean, by that, is this: if that comparison should show that ¾ of the firms make a profit, for instance, on cattle and calves, and if the comparison should show that ¾ of the firms lose money on hogs, it would be an indication that the tariff is not prop- [fol. 913] erly balanced between species, and it is for that purpose only that comparison has been included.

The next section, which has not been discussed, covers pages 241 to 279. It shows the recapitulation of account sales and purchases, owners, drafts, for the species cattle, calves, hogs and sheep by firms, analyzed in detail and taken from the blue audits. On the next sheets, 280 to 282, is a calculation showing the volume handled on an annual basis by the various firms for the yard functions only. The number of cars handled by the firms is shown and the number of salesmen and buyers and yardmen reduced to an annual basis. What I mean, by that, is this: if an individual worked only a half a year, he was included under the head of the number of salesmen and buyers as a 50 per cent man, that is giving 50 percent of his time to that particular function. If he spent three months of the year, he was classified as a 25 percent man, that is, the equivalent of one man for a quarter of a year. The same was done for yardmen, and the comparison between the firms is evident on the face of the statement.

The next sheet, 283 to 286, is a comparison of salaries for non-owners, showing from the highest to the lowest the salaries which the non-owners received for selling and buying the various species. It shows also, on page 286, a comparison of salaries for non-owners of general and office managers. The remaining sheets in this study, from pages 287 to 550, contain a sheet for most of the firms for each species [fol. 914] handled by that concern. I say "most of the firms" because in a few instances a sheet may not be shown for a firm which had either a very small volume or all of its volume was received under one mode of arrival. These sheets attempt to take the species cost of each firm and break that species cost down to a cost differentiated for modes of arrival.

I will describe 336, and that description will apply to all of the sheets following, and pages 287 to 335, inclusive. There is shown first on the top of the page the volume handled by the particular firm for the particular species indicated in the heading. The next section shows the number of drafts, owners and account sales and purchases, analyzed by mode of arrival for the particular species, which information was taken from the sheets heretofore described. The same comment applies to the item "Income Gross" that was taken from the income section of this study as described heretofore, and divided by mode of arrival.

The per car calculation, which is the next line, is the division of the total number of cars into gross income by mode of arrival. Now, the question arose in our minds as to this: is the differential, as in effect in the tariff now in use, correct, and if not correct, how does it vary with what it should be? With that in mind, we had to test as best we could what the distribution of the cost would be, if the same profit were derived from each mode of arrival. To make that test, we took the per car income for the total [fol. 915] column. That is on this particular sheet $20.50, and determined a ratio against the cost per car of $21.45, which cost per car has heretofore been determined. The ratio of the incomes to the cost is then applied to each per car income amount. For instance, the ratio of $21.45 to $20.50 is about 21 to 20. If we apply the ratio of 21 to 20 to each of the income amounts, we get the corresponding cost amounts; cost of $20.50, income per car, and the $21.45 cost per car, are comparable figures, being both composites. This is only for the purpose of testing what the existing differential is if it had been constructed to give to each mode of arrival the same percentage of profit as any other mode of arrival.

Now, having made that test, the next question is: is that differential correct, and, to find out whether or not it is correct, we have to break down all of the composite costs into costs by mode of arrival. That is accomplished in the following way: in the middle of page 336 will be found 14 lines, designated 1 to 14, showing in total the expenses allocated to cattle and calves by functions. The total expenses are then broken down to the modes of arrival in the following way: For selling, the total selling cost $9,759.34 is allocated to mode of arrival on the basis of head plus drafts. The same method was used for buying. The yarding hogs, $6,386.82 was broken to mode of arrival on the basis of drafts. Office and administration salaries was [fol. 916] broken to mode of arrival on the basis of account sales, owners and drafts. Soliciting salaries on the basis of gross commissions with the seconds out; non-salary expenses, business-getting and maintaining, on the same basis as salaries for soliciting. Non-salary office expenses on the same basis as salaries for officers. Yarding non-salary expenses on the same basis as yard salaries. Administrative and general, non-salary expenses, on the same basis as office

and administrative salaries. Risk items on the basis of head. Interest on capital on the basis of cars.

The next step is to calculate the unit cost, which is done by dividing the number of cars into the distributed expenses and the lines in the bottom section of the page corresponds with the lines in the middle section of the page, which shows the unit calculation by mode of arrival and by functions. When we compare the cost per unit, as determined in this way, with the test cost made up above in the line cost per car, cattle and calves, we find that the differential as it exists in the present tariff under this method of calculation is in some cases fair and, in our opinion, in other cases is not fair. For instance, take mixed rail No. 2, plural ownership, the income per car is $26.01. Under the differential test of the existing tariff, the cost of that car would be $27.21. However, our differential studies show that the approximate cost of handling cars for that particular mode of arrival is $44.40 and the comparison can be made in that [fol. 917] way throughout for all firms and for all species. That is all I have on this exhibit.

My next proposed Exhibit is No. 52. This is the statistical study for the order buyers and follows very closely the outline which I have given on the commission men's study. It follows very closely the same form and the same principle.

The data which underlies the study made for 1931 was prepared jointly by the firms who are registered as commission firms on this market, and our own employees. That is, the commission firms took off the statistics from their books and records along with the assistance of our own employees. The analysis of the ~~income and expenses~~ as shown on the profit and loss statement for 1931 was taken from the annual reports which those firms had filed with the Bureau, and were further analyzed by our accountants to get the necessary information to make, not an exact study, but a study of sufficient detail to give the conferees some substantial information upon which the discussion as to the adjustment of the rate question could be had. There was no study made of the order buyers in any way at that time. There was no differential study made for any firm in 1931 and some of the statements which were produced for the 1932 study were not produced for the 1931 study. What we did prepare was the analysis of volume, the analy-

sis of commission, the analysis of expenses, and a unit calculation up to the point of composite costs for all species. That is as far as we went for 1931.

[fol. 918] There is the statistical study itself, the questionnaire underlying that, and the work papers which underlie it, both the work papers which were used for analysis of the operations of the individual firms and the work papers underlying the study itself. There were no blue audits made for 1931. I have five copies of the statistical study, and of course there is only one set of the working sheets and there is only one questionnaire.

Proposed Exhibit No. 56 is the statistical study of operations covering the commission firms for the year 1931.

The next exhibit is marked Government Exhibit 57, and covers the salary questionnaire used in preparing the statistical study for the year 1931 covering the commission firms only.

Mr. James A. Strachan, a witness, called by the Government, testified as follows:

Direct examination:

I am a cattle salesman for Wood Bros. I am an employee. That is a market agency engaged in the commission business at the Chicago market. I have been with that firm five years, or six years this coming October. I own no interest in the firm. The firm is at present being run under [fol. 919] an estate, and has been since the death of Kay Wood, who died in October, five years ago. I am a cattle salesman for that firm.

I started in the Fall of 1912 as cattle driver for Swift & Co. I drove cattle for close to a year and was then given a position as weight taker on a calf-buying station. I carried on that capacity then a few months and was given an opportunity to buy calves. I bought calves possibly six months and was given an opportunity to buy cows. I bought cows for a very short period and was sent to St. Paul and there bought everything, calves, cows, bulls and steers.

All this time I was in the employ of Swift & Co. I was brought back from St. Paul and in the capacity of a steer salesman here in Chicago, then was put on various markets at times and off and on, returned to St. Paul, finally being

situated there as assistant head buyer until 1918 when I went into the Army. When I returned from the Army, I returned to Swift & Co. at Chicago as steer buyer on this market and was in that capacity until I left the packers and went into the commission business. That was in the year 1921, I believe. I have been in the commission business since.

I went into the commission business as an employee. I have never been engaged in the commission business on my own account. The administrator of the estate comes up and inquires as to how things are going on and so forth. [fol. 920] We all seem to know just what our individual duties are, and if we feel that two or three heads is better than one we confer. I believe everyone of the employees was with Wood Bros. before I came into their employ. I am the head steer salesman. We have an assistant steer salesman and we have one cow salesman. The cow salesman sells cows, calves and bulls, yearling heifers and sometimes yearling steers, if they are the proper weight for the butcher alley.

I have confidence in their ability to handle their own work like it should be handled. As to my assistant steer salesman, we don't have any particular division of work. We just go along in harmony and he sees what should be done, and he does it without being told, and I try to do likewise myself. We do not necessarily divide up the steers, one taking a certain proportion and the other taking the rest. We might possibly work on the same steers, but we would not sell without confiding in each other.

We usually try to handle the driving of cattle with our own men. We employ yardmen in the cattle alleys.

I would not say that it was the general practice, for me and the other two cattle salesmen, to confer each morning in regard to the price we are going to ask for cattle that day; we do it at times. We may go into a few of the cattle and consult each other as to what we think the possibilities of the market are, what perhaps these cattle may bring, and [fol. 921] the information to determine the prices that we will ask for steers on any given day, depends a good deal upon my own ability and judgment as to the value of the cattle and the situation of the market.

By situation of the market, I mean we may have had a large run on a Monday and another run might come along

on Tuesday of a pretty fair size, Monday's market perhaps is lower, and with a good run on Tuesday, you naturally figure that the market would not be any better. I do not judge that by the Chicago market alone, I think we have to keep pretty well posted on conditions in general. Salesmen should be pretty well posted on the hide markets and the offal credits of the animals, the conditions of that market, as well as the conditions of the beef market. As to whether that information is available to me each day, I have to dig it out myself. I do quite a bit of reading, try to keep posted in various manners.

We subscribe to papers from the various markets, particularly St. Paul, Sioux City and Omaha, daily market papers, which we usually receive the next morning after they are published. They come in on the afternoon mail and I usually look them over the afternoon they come in. They come in the following afternoon after publication. I do not necessarily receive information about hides and other by-products from those papers, but I do take papers that give me that information. One of the papers is the Chicago Journal of Commerce. I think that paper carries a full account of most everything that would be of interest [fol. 922] to one who wants to keep well posted.

None of our yardmen do any sorting. That is to say, in fitting the cattle for sale, they might bring over some cattle with a bull or two and some cows or calves with them and for the sake of the service that they would immediately take off; otherwise we do the sorting and fitting ourselves. They might sort as to whether they belong to the butcher alley or the steer alley. We three salesmen do all the sorting after we arrive in the yards, that is, other than that which I have mentioned. Our yardmen assist us in doing that. As to whether we frequently offer cattle for sale just as they arrive, a good deal of that depends upon our opinion as to what the markets might be that particular day and in which manner we could possibly net the shipper the most money. It happens that if possible, we will offer them one way and they may not be attractive and then we will sort them, and then throw them back together. I worked for the Northwestern Commission Co. before I came to this present firm.

I think I possibly write as many personal letters as anybody in this building.

I do not do any work in connection with the account sales, other than to see that the tickets are correctly marked. We have to write letters in sending back the account sale. I do for most of the cattle that I sell. We like to fully explain [fol. 923] market conditions to the shipper and his various kinds. I might sell some of his steers, the butcher salesman might sell his she-stock; in that letter I will drop a little line in regard to the steer market on his class, the butcher salesman would tell him in a letter also; and that letter accompanies the account sales. I write other letters to prospective customers. Some I know who have cattle on feed and want to be kept well informed. I keep in very close touch with them.

I would say that our firm sends out a market letter every two weeks, and we publish a monthly organ called "Wood Brothers Market Digest." The latter summarizes the market for the past month and the prospects for the future.

When I have lots of time, and get time to go through our files, we have a record of our customers, and in these files we keep a record of their shipments. I find sometimes from the file that we perhaps have not heard from a man for possibly two years, and then I write him a letter asking him what he has on feed, and how conditions are. I make trips to the country to look at livestock as frequently as I can, sometimes watching that the trips are profitable, if possible, as we find trips to the country rather expensive at times.

As to whether I consume all the time allowed me by the Exchange rules, it sometimes depends upon my convenience, if I am able to get away or not. Those trips are usually made at week-ends. I do not personally own an exchange [fol. 924] membership. I operate under one owned by the firm. When we make trips to the country that are not upon request, they are to try and get the business.

I could not give you a direct answer as to whether by and large there is any difference in the work involved in selling cattle arriving by rail as compared to those arriving by truck. It all depends upon the circumstances. We have at times cattle come in by truck as I said before, might not look as attractive as those that come off the rails; on the other hand, we have at times had cattle that come on the rails that possibly don't look as attractive as those which come in on the truck. Wood Bros. make very few loans on livestock. I might sponsor a loan or recommend a loan,

if I knew the character, ability and integrity of the man who is making the application. Of my own knowledge, I do not know of any loan that was ever made on anything that was bought otherwise than here. I believe there were a few loans a while back on some cattle that were bought in Nebraska, but our loan business is practically nil. As to whether my recommendation as a salesman brings business to the firm, I imagine at times a man that has a great deal of confidence in you; in fact, I think the commission business is still built up a good deal on individuality. I would say this relationship between the salesman and his customers is quite a personal one.

It is rather an unwritten law of commercial conduct that loans made by commission firms on cattle, that the cattle [fol. 925] will be sold by that firm. When a loan is made we naturally anticipate that the borrower will sell through our firm.

In determining the policy with reference to the expenditures of the firm for any purpose such as soliciting, or business-getting, I might express an opinion. The two other cattle salesmen also make soliciting trips. My territory for making soliciting trips to the country, are not limited to any particular section or state. In Fall, we do receive some western cattle from Dakota and Montana principally. I think we have made two western trips in the last four years. The states comprising our trade territory for native business are Illinois, Iowa, Missouri, Indiana, Wisconsin, Montana, South Dakota, some from Wyoming, Nebraska, Kansas, Ohio, practically all states in the radius of the corn belt. Most of the steers from Ohio go east. We get a few at times, generally not very many. I have made soliciting trips to all the states which I named at one time or another in my experience. I possibly go to Iowa most frequently. Iowa is more or less logical territory for this market.

It has been my observation of late and I am of the opinion that there is a far greater percentage of cattle, hogs and sheep going to the western coast than comes to the east at the present time. They are moving to the west coast from points in Eastern Nebraska and I believe they have come as far east for livestock as spots in Iowa. I would not say [fol. 926] that that is recent, but it has been on the increase. It applies to all classes of livestock.

A good deal of feeders who handled lots of livestock in years past have been perhaps put out of the picture by financial distress. I think that is the general situation throughout the country. I believe the quota is far below its usual quota of livestock, due to bad seasons in crops which they have not been able to combat. Prices determine whether livestock comes to Chicago or goes elsewhere, to a certain extent. It would be if I were shipping.

It all depends on the supply and demand as to whether there is a tendency to maintain more or less definite relationship among the different markets. We may have a very light run here in Chicago and Omaha may have an exceptionally large run and prices in Omaha are very apt to be lower on that same day than they are here in Chicago. And the opposite might be true. The packers would put their orders where they could buy them the cheapest.

Livestock moves out of the river markets and other western markets to the Chicago Stockyards for sale. I have never seen any in my experience move from Chicago to those markets for sale. I find that other commission firms on the Chicago market solicit and appraise livestock from the same people I visit. I would imagine that possibly another concern may be corresponding with my customers or I with theirs. It is quite possible. I would not say that [fol. 927] my experience as a buyer has exactly qualified me to become a salesman. It possibly helped my knowledge of values. Of course, I had to turn from a bear to a bull, and I did that over night. It is not for me to say whether I did it successfully. I am always trying to get as good a price for livestock as other salesmen on the market. It is very seldom that we get two loads of cattle exactly the same where we could make that comparison.

You have to have the goods to sell cattle at the top.

As to what determines the number of cattle I can sell in a day, I don't know what you base that question on. If you will ask that question in another form, it might make it a little clearer to me. I don't quite understand it. I cannot answer it intelligently.

Mr. Dagger (continuing): Mr. Strachan, taking conditions as they exist on the Chicago market and as the business comes to your firm, keeping in mind the fact that there is a variation from day to day, how many cars of steers can you sell in a year's time?

Mr. O'Bryan: Now, just a minute, I object to the question. You mean in what year, 1932?

Mr. Dagger: Take 1932 or——

Mr. O'Bryan: I object to the question on the ground that the records of Wood Brothers is the best evidence of what Wood Bros. did for that year in answer to that question and that this witness at best could only give a guess as to what that performance was.

Mr. Dagger: Will you read the question, please?

(Whereupon the question was read.)

[fol. 928] Mr. Dagger: I am not asking the witness, Mr. Examiner, what he did. I am asking what his capacity is as a salesman.

Mr. O'Bryan: I submit that the question did not ask him that. The question asked him what he did.

Mr. Dagger: I submit the question says "what can you do" and "can" does not mean "did".

Mr. O'Bryan: All right.

Mr. Boyd: I submit that whether it says "can" or "did" it is just as objectionable. May I ask a question to test the witness' qualifications as a basis for an objection?

Mr. Dagger: Yes, you can ask a question.

Mr. Boyd: Do you know how many cattle you sold in 1932?

The Witness: No, sir.

Mr. Boyd: Do you know how many cattle any other salesman sold in 1932?

The Witness: No, sir.

Mr. Boyd: Then, I object to the question on that basis.

Mr. O'Bryan: Same objection. The witness' answer could only be a guess and that the records of the firm are the best evidence.

The Examiner: Objection overruled. If you can answer the question, Mr. Strachan, you may do so.

The Witness: I could not stipulate truthfully the exact number of head I sold or any of our salesmen sold. It would be impossible.

Mr. Dagger (continuing): How many could you sell if you had them to sell?

Mr. O'Bryan: I object to the question on the ground that it does not take into consideration any of the varying factors connected with the sale of cattle over a year's

time, as to whether markets were fast or slow, and it assumes the fact which this record shows is not true, that cattle all of one kind arrive at this market for sale. The record is clear that cattle arrive in various grades and [fol. 929] various weights and various types.

It assumes facts which are not on the record and does not assume all the facts which will be necessary to take into consideration in making a proper answer to the question and for that reason it is objectionable.

Mr. Boyd: Same objection.

Mr. Dagger: Mr. Examiner, we understand the same objection has been made and overruled, and we are at a loss to know why the same objection is permitted to be continually made in order to advise the witness what he shall do.

Mr. O'Bryan: I object to counsel's statement that the objection is made to advise the witness as to what he shall do. The objection is made because it is a proper objection and will be continued to be made upon the same ground.

Mr. Boyd: It seems to me, Mr. Examiner, that the mere fact that the Government continues to ask a question which we think is improper or which I may think is improper, and I object to it and state the reasons for the objection, that the fact that the Examiner overrules it, which is appealable to the Secretary, that the same objection might well be raised and overruled as many times as the question is asked.

Mr. O'Bryan: There is no way in the world of making a record in this case without objections specifically to the question each time it is asked.

Mr. Boyd: And particularly in view of the importance of the question.

Mr. Dagger: Is there a question on the record?

(Whereupon the question was read.)

The Examiner: Objection overruled. Is the question clear to you, Mr. Strachan?

The Witness: Pardon me?

The Examiner: Is the question clear to you?

The Witness: Do you want me to answer it?

[fol. 930] The Examiner: If you can answer it, yes sir.

The Witness: Will you read the question?

(Whereupon the question was re-read.)

Mr. O'Bryan: I understand that question refers to the previous question, in so far as it is a question regarding the number of steers which this witness could have sold, is that right?

Mr. Dagger: Of the class and kind that he handles, steers, yes sir.

The Witness: If you read that question again, please.

(Whereupon the question was read.)

Mr. O'Bryan: I think that the witness is at a loss regarding the question and——

The Witness: I fully understand it, I believe. I took an oath to tell the truth and that is utterly impossible.

Mr. Dagger (continuing): You could not even approximate it?

A. I have no idea.

Q. Is there any limit to the number you could sell?

A. There is a human limit to everything.

Q. Could you sell one car in a year's time?

A. Possibly.

Mr. Boyd: I object to that question—go ahead, he has answered it.

The Examiner: Objection overruled, to keep the record straight.

Mr. Dagger (continuing): Could you sell one thousand cars in a year?

Mr. O'Bryan: I object to that, if the Examiner please, because the witness has said it would be impossible for him to answer the question. You are now interrogating him as to whether he could sell one car or two cars or ten cars or one thousand cars, he has already answered the [fol. 931] question.

The Examiner: He has not answered that question, Mr. O'Bryan. He answered the question about whether he could sell one car but he has not answered the question whether or not he could sell one thousand cars.

Mr. O'Bryan: He has answered the question completely, as to how many he could sell. He said it would be impossible to tell. This is simply argumentative.

The Examiner: If the witness knows whether he can sell one thousand cars under the question as put, which goes back to the conditions as already discussed, the witness may answer.

Mr. Boyd: I want to raise the specific objection, it does not make any difference what the witness may answer as to whether he can sell one thousand cars or not, it is an unfair position to take, in the first place, to ask whether he can sell one thousand cars, when no other conditions surrounding the question assumes conditions that prevail at a market which is the largest in the world and having the greatest multiplicity of difficulties confronting the salesmen, and I think if the witness were to say "yes" or "no" that the effect of it would be the same because it would not be a test at all of the man's capacity; the witness having further stated that he does not know how many he sold during the year 1932. There is not any indication as to whether or not this question contemplates the witness answering what he could have done in the past or whether it projects itself into an unknown future.

The Examiner: Mr. Dagger, the question reads now, as I understand it, whether the witness could sell one thousand cars. Mr. Boyd's objection raises the point as to whether or not it is clear that the question contemplates some definite period, apparently, I suppose, whether it is 1932 or 1933. Will you state definitely what you have in mind in connection with one thousand cars, as to the year?

Mr. Dagger: I am asking this witness, Mr. Examiner, for his opinion based on the conditions as he has found them at the Chicago market. Naturally this question presupposes that he will consider conditions as he has found them in his recent experience in the last year or such period as [fol. 932] he considers a normal period to consider.

Mr. O'Bryan: If it is in regard to the conditions as he has found them, that is, the actual experience of the witness in selling steers, as he has acted as a steer salesman for Wood Bros., and the records of Wood Bros. are the best evidence of what this witness could or could not do.

The Examiner: Mr. O'Bryan, in these objections, it would seem to me you take the position that what a man does do is absolutely conclusive of what he can do. Do you take that position seriously?

Mr. O'Bryan: No, I do not. I take the position that unless all of the surrounding factors are brought to light in the question that any answer given to the question as to whether a man could sell one thousand carloads of steers

is nothing but a mere guess and it is not a proper question. It is an attempt to ask a hypothetical question without stating the hypothesis. It is not asking for an expert opinion.

The Examiner: Well, Mr. O'Bryan, the Examiner has ruled against you on that phase repeatedly, and that question has been asked and that question has been regarded, and that question was asked in the Omaha case which went through the Department and through three Federal Judges and through the nine judges of the Supreme Court of the United States, and that question, in the opinion of the Examiner, as he has repeatedly indicated, is clearly admissible, and it is not synonymous with what he did do. It is not based on a hypothetical question. It is based on what the witness knows or what the witness' opinion is based on the actual conditions that he, as a cattle salesman, has met.

Mr. O'Bryan: Yes.

The Examiner: And it seems to me there is quite a distinction between that and the two points that you contend for.

Mr. O'Bryan: It may be, but in all due respect——

Mr. Boyd: In response to what the Examiner said, it is conceivable to me, Mr. Examiner, the question may be put and the witness may answer "yes"——

The Examiner: Yes.

[fol. 933] Mr. Boyd: —and you have no facts, no circumstances, you don't know what is in the mind of this witness and you cannot call another witness to the stand and ask him the same question with the same facts and get the same answer.

Mr. O'Bryan: That is the test.

Mr. Boyd: The test is whether or not we can call another witness and ask him to take in certain surrounding facts concerning his answer and state it the same way and dispute or controvert the testimony of one witness with the testimony of another, and it is utterly impossible because they give no facts and it is utterly impossible to state in a question the circumstances at the Chicago market with which the witness is confronted, because we don't know what they were.

Mr. O'Bryan: With all due respect to the Examiner's ruling and to the Examiner's statement, that is no indication to me that either the Circuit Court of Appeals or the Supreme Court in the Omaha case ever passed upon the

propriety or the legality of a question of that kind. It is true that the Department may have found certain facts from the answers to questions of that kind and that courts of appeal would not go beyond those findings. I am trying to make a record here upon the legality and the propriety of that kind of a question so that if this case goes up, the higher courts can pass upon the question directly. Now, the only way I can make such a record is to continually object to these questions, and while I fully appreciate that the Examiner is going to overrule my objections in advance, I am still entitled to make my record.

The Examiner: Mr. Strachan, is there any phase of that question that is not clear to you?

The Witness: No, the question is very clear but the possibility of a truthful answer would be impossible. I would not have a thing to base an opinion or to estimate to you what my ability might be as to how many cars I could handle, sell in a week, a day, a year or two years.

The Examiner: That was not the question, Mr. Strachan. The question now under consideration was whether or not you could sell a thousand cars of cattle a year under the conditions that you have actually found them to exist if you had all of the cattle to sell that you can sell of the kind that you have been selling. Now that is the question. Now, if [fol. 934] you cannot answer that question I do not want you to answer it. If you can, I want you to answer it. That is my position.

The Witness: Do you want a "yes" or a "no"?

The Examiner: I want you simply to answer and you know what your answer should be. Do you know whether you can answer it or cannot answer it, or how it should be answered? I am not interested in what the answer is, but just to get the answer in the record.

The Witness: The answer to that question from me would be that I have absolutely nothing to base an opinion on as to what I could do.

The Examiner: Then, as I understand, the answer to the specific question is that you cannot answer whether or not you could sell a thousand cars of the type of cattle that come to your firm in a year if you had all of that type of cattle coming as they have come during the year.

Mr. O'Bryan: I think the question is specifically directed to steers, if the Examiner please, not cattle.

The Examiner: Well, steers, then, as they have been coming to your firm.

The Witness: I swear, I just, if I would say "yes" I might be telling you an untruth and if I tell you "no" I have nothing to base it on what I could do.

The Examiner: Well, I take it, then, that you mean that you cannot answer the question there, that is the thing, any other way than you have answered it, is that right?

The Witness: I have nothing to base it on to tell you "yes" or "no" and in my own mind feel that I am telling you the truth.

The Examiner: That is all I want, Mr. Strachan. I just simply want the truth as you see it.

When I go out each day I base my judgment as to price [fol. 935] principally on market conditions, classes of cattle, conformation, quality, flesh, and it is possible that one class of cattle might suit a particular order, we knowing that that particular locality calls for that class naturally try to dispose of them in that channel.

As to whether in my business, experience is of any value to me, I have never reached the height of perfection yet; we learn every day, but the experience that I have had in the past naturally would help me. It is a training that requires quite a long time to attain and you never really reach the height. Naturally my experience and training has all been directed towards developing my mind to arrive at my best judgment in respect to the price of livestock. I am not infallible. I believe there are days when I get the top price, and there are days when I do not get the top price. The prices I ask for livestock are based upon my judgment. No one ordinarily tells me what to ask for the livestock. Each day we are making an effort to get the last nickel for every class of cattle we have. When I go out to the country to appraise livestock for a customer, I size him up and give him my judgment. I receive telephone calls but not very often, from shippers for the purpose of obtaining my judgment as to market conditions and about what their livestock will bring as the result of the description which they give me over the phone. It has happened. I always try to use my best judgment. There is nothing to base an answer on as to whether I [fol. 936] think I can sell as many steers or the class of cattle I sell as any other salesman on this market, and I

cannot answer it. As to whether I believe I can render as good service as any other salesman on this market, it would depend where you were going to draw a comparison, in my opinion. It depends upon what an outsider thinks of our services. We try to keep it up to the standard of what is expected of us.

As to whether I think there are some who give better services than we do, I do, if they are accomplishing any more than we are in our efforts. I may possibly sell the most steers for our firm, and I answer that question, due to the fact that in the Fall of the year my assistant sells a good many of the grass cattle which might even up things through the whole, year in and year out.

As to whether our butcher salesman sells as many as either I or my assistant, as many cattle, it all depends upon the receipts of butcher stock. Some days he may sell more and some days less. I could not answer how long my assistant has been in the business of selling cattle. I do not know whether he has been in the yards longer than I have. I believe he was with Wood Bros. two years before I came. I believe I receive a larger compensation than he does. That is not necessarily based on the fact that I direct his activities. It is possibly based upon ability. As to whether I mean I can sell live stock better than he can, maybe; I think I can.

[fol. 937] It would be hard to determine whether I get a better price for what I sell than what he gets for what he sells. We are not both selling the same thing. The reason for the difference in compensation between my assistant and me is not because in selling steers he gets a lower price than I do. When I spoke of ability as being a reason, he perhaps has not had quite as much experience as I have had on some classes of cattle. Other classes of cattle he may have just as much. I possibly have a wider acquaintance than he has. It might have something to do with it. I do not know the extent of his acquaintance as compared with mine. It is a valuable factor. It is an asset, in a way, because you have a number of friends that have confidence in you, of course, naturally you receive a little more business from them.

I do not know the largest number of cattle I sold in a day in 1933. I cannot recall anywhere near it, I would have to refer to the records. I do not recall the largest

number of cattle received by our firm any day in 1933. I would have to refer to the records for that. The receipts vary somewhat from one day to another. That variation is sometimes very great. We handle them just the same, regardless of whether they are bad days, or large days, or small days. We handle them every day to the best of our ability.

I know Mr. Gene McAdams of John Clay & Co.; I believe I know Mr. Summers of the same firm, but don't recall the name.

[fol. 938] Q. In your opinion, can you sell as many cattle in a year as Gene McAdams can sell?

A. I don't know how many——

Mr. O'Bryan: I object to that question, if the Examiner, please, on the ground that no proper foundation has been laid for it. There is no evidence here that the witness knows how many cattle Gene McAdams has sold in a year; no evidence, no foundation laid as to the witness' knowledge of Gene McAdams' ability, and the question is simply asked for the purpose of trying to hook up the ability of this witness with the ability of some other witness to sell so many carloads of cattle in a year, and the further objection that this question is now directed to cattle, where in all previous questions along this line have been directed to this witness as to his ability to sell steers, and he has already stated it was impossible for him to tell how many carloads of steers he could sell in a year.

Mr. Miles: Take the ruling. No argument.

The Examiner: Read the question.

(Whereupon the question was read.)

The Examiner: I will overrule the objection, but I don't want you or any other witness to answer any question that is not clear to you or unless you have some intelligent opinion in the matter.

The Witness: That question is very clear. I have no idea how many cattle he can sell in a year.

Mr. Miles (continuing): Then, can you answer the question based upon your knowledge of Mr. McAdams or knowledge of your own ability, whether you believe you could sell as many as Mr. McAdams?

A. Nothing to base an opinion on.

Q. Assume that the record shows that Mr. McAdams has personally sold over 1300 carlots in a year, then, in your opinion, do you believe you could sell as many as Mr. McAdams has sold in a year?

Mr. O'Bryan: I object to the question on the ground [fol. 939] that it only assumes one fact, and that is the assumption that Mr. McAdams has sold 1300 carloads of cattle in a year; I doubt whether that assumption is of record, but we will let it stand as an assumption, unless the witness is asked and has knowledge of the condition under which Mr. McAdams is assumed to have sold 1300 carloads in a year, I submit that the question is incomplete and not a proper question.

Mr. Miles (continuing): Mr. Strachan, you may assume, if you wish, that you have just as favorable an opportunity as Mr. McAdams, that the situation is the same with you as Mr. McAdams, and that he has sold more than 1300 carloads in a year, do you believe you could sell as many?

Mr. O'Bryan: I submit, if the Examiner please, that to tell the witness to assume he had just as favorable conditions is very wide of the mark. If Government Counsel knows the conditions under which Mr. McAdams is assumed to have sold 1300 carloads a year, then Government counsel, in asking a proper question should state those conditions to the witness.

Mr. Miles: Take the ruling, no argument.

The Examiner: If your knowledge of the conditions under which you operate and under which you know that Mr. McAdams operates are such that would enable you to express an intelligent opinion on the matter, you may do so.

The Witness: I don't know how I could base any opinion as to whether Mr. McAdams may be working under different conditions than I, or vice versa. It is impossible to tell a truthful answer as to how many I may sell compared to him.

Mr. Miles (continuing): Does that complete your answer?

A. Yes, sir.

Q. Now, Mr. Strachan, you this morning told Mr. Dagger in answer to his question that you could not frame an opinion and state an opinion as to how many you could sell?

A. Yes, sir.

[fol. 940] Q. That is correct, is it not?

A. Yes, sir.

Q. Have you met commission men at any of the other yards?

A. Pardon?

Q. Have you met commission men and salesmen at any other stockyards?

A. Yes, sir.

Q. What yards?

A. Oh, practically all yards.

Q. You know the commission men at St. Louis, that is, East St. Louis?

A. Well, I don't know anybody in particular down there. I am better acquainted, perhaps, in Omaha and St. Paul.

Q. Do you know any of the commission men at Sioux City?

A. Yes, sir.

Q. How long have you known any one of them just what has been your acquaintance with them?

A. I got quite well acquainted with several of them while I was buying cattle for Swift & Company, I used to go at times from St. Paul to the Sioux City market to buy cattle, and in that way I got acquainted with them.

Q. Mr. Strachan, in your opinion, are the commission men on the Chicago yards as intelligent and well informed and honest as they are in Sioux City?

A. I think we have the highest type of men on this market here, intelligent men, their word is good, in fact, I think all cattle dealers on all markets are of the same caliber.

Q. Then, if it be true that commission men on other stockyards have been able to form and have been willing [fol. 941] to express an opinion as to their potential selling capacity, do you know of any reason why the men on the Chicago yards cannot do the same?

A. I can't——

Mr. O'Bryan: I object to that question, if the Examiner please, on the ground that what witnesses testified at other yards has no bearing on this case, and that if witnesses appearing before the Examiner at this hearing are able to sense the impossibility of answering a vague, improper question, which is not founded upon any fact, that is no reason why they should be bound by any testimony of

witnesses given at other yards who might not have sensed the import of the question.

Mr. Miles: Mr. Examiner, do I understand, then, that a witness would testify if he did not sense the import, but will not testify if he does.

Mr. O'Bryan: No, you don't have to understand that at all. You have to understand, Mr. Miles, that in my opinion the question has no foundation, as far as any irrelevant, pertinent or material facts are concerned, upon which an opinion can properly be based.

Mr. Miles: No argument, Mr. Examiner, not going to encumber the record by useless colloquies.

The Examiner: Read the question, will you?

(Whereupon the question was read.)

The Examiner: Objection overruled.

The Witness: Well, it is not a question of my willingness to express an opinion. That I am perfectly willing to do. But I do want to express an honest opinion or tell you the exact data or tell you nothing.

Mr. Miles (continuing): Mr. Strachan, may I suggest this, which is not in the form of a question, but a suggestion to you, that we recognize that when a man expresses an opinion, that that is quite different from stating a fact. Now, we have not asked you as a fact what you could do because no one in our judgment can state as a fact what he can do, he can only state what he has done, and if it gets into the realm of what he can do, then, that is an estimation based upon his own knowledge of the work, an opinion.

[fol. 942] Mr. O'Bryan: Then, I want to state to Mr. Strachan that the Secretary, in previous cases, has taken these opinions which are not based upon any facts, and which are mere opinions, and on the basis of those opinions has made definite findings of fact, that a salesman could or could not sell so many carloads of cattle in a day or a week or a year, and I also want to state to Mr. Strachan that the Courts of appellate jurisdiction have uniformly found that the Secretary of Agriculture, being in the position of a fact finding body, will not disturb the findings of fact of the Secretary of Agriculture, insofar as the facts themselves are concerned, if there is any evidence in the record upon which those findings of fact can be based, and that the purpose of this question is simply to get an opinion

from the witness upon which the Secretary may base some finding of fact.

Mr. Miles: Now, Mr. Examiner, you will note that because of sense of courtesy I did not interrupt the statement of counsel. In fact, I will say I am very glad to have that statement on record as showing their position in this matter. (Continuing) Now, Mr. Strachan, I will ask you this, before there is any ruling: Has the statement by counsel given under the form of a suggestion to you distracted your mind or in any way indicated to you what your answer should be?

A. Absolutely not.

Q. You are still willing to answer the question as honestly as if he had not made that statement?

A. Absolutely.

Mr. O'Bryan: And you are still willing, Mr. Strachan, to answer the question as honestly as if Mr. Miles had not made the statement to you which he did make which prefaced my statement to you?

The Witness: Absolutely.

Mr. Miles: And I will say that my statement was merely to differentiate between a statement of fact and a statement of opinion with reference to which this witness seemed to be bothered, and in no way can that statement be compared with the statement made by Mr. O'Bryan.

Mr. O'Bryan: I will let the record show what your statement was and my statement and the meaning of either [fol. 943] statement was, Mr. Miles; they are very apparent.

Mr. Miles: That is very good. No, go ahead. Now, there is a question on the record, Mr. Strachan.

The Witness: Read it again, please.

Mr. O'Bryan: In fact, mine was more apparent.

Mr. Miles: You bet it was, sir, to your own damage.

(Whereupon the question was read.)

The Examiner: Is the question clear to you?

The Witness: The question is, why I am not able to give an opinion as to the fact as regarding how many cattle I might sell as compared to somebody's else testimony?

Mr. Miles: No, very briefly it is this: I am now paraphrasing it and not giving it as I first gave it.

A. Yes, sir.

Q. That other commission men have been able and willing to give their opinion as to how many they could sell if they had all the supplies they wanted, all they could handle, why, in your judgment, cannot the commission men on these yards, being just as intelligent, form an opinion, and why should they not be willing to express an opinion as to what they could do?

A. I am not aware of the fact——

Mr. O'Bryan: I object to that question as to the witness' opinion as to what commission men on these yards do. If it is restricted to the witness' opinion as to why he, himself, cannot give an answer to that question, then it is proper; otherwise, it is manifestly improper.

Mr. Miles: Take the ruling.

(Whereupon the question and part of the answer and Mr. O'Bryan's statement were read.)

The Examiner: Mr. Miles what have you to say as to the point Mr. O'Bryan raises as to whether or not the question should be confined to the winess' testimony rather than to [fol. 944] the other salesman or commission men on this market?

Mr. Miles: If this witness knows of any reason why the commission men, taken as a whole, on these yards, are not able to form an opinion and are not willing to express it, or are able and should be willing, I want that. If the witness wants to limit his answer as to why he himself cannot—feels that he must limit his answer that way—then I want that. Whatever the witness wishes to do about that answer is satisfactory to me, whether limiting it to himself or state for the entire yard.

Mr. O'Bryan: I submit, if the Examiner please, that there is no foundation laid or no evidence here that the witness knows what opinions have been expressed by other commission men on these yards and to ask him a question as to his opinion as to what other commission men have expressed as to their ability is absolutely without foundation, and that the only possible proper question without a proper foundation that could be asked him is what his own opinion is.

Mr. Miles: Take the ruling.

The Examiner: Do you know whether or not most of the other salesmen have or have not expressed any opinion in

regard to what they could sell if they had the livestock to sell?

The Witness: I just started to say there that I was unware of the fact that any other witnesses had declined to express the fact of what they might do and what they might not do, and I am sure that none of them will come here unwilling to give all the facts that they possibly can truthfully, and, as far as testifying to an opinion as to what you might be able to do, and what you might not be able to do, I personally find it rather hard to give a definite answer.

Mr. Miles (continuing): Now, that is correct, Mr. Strachan, so far, but now I want to know if you know any reason why the commission men on these yards are not as well able to form an opinion.

The Witness: That fact——

Mr. O'Bryan: Wait a minute. I object to that question in view of the witness' answer that he does not know [fol. 945] whether or not they did or did not express any opinion and that the question is absolutely improper. If the question is framed to the point as to why this witness himself cannot express an opinion, then the question is proper. Otherwise, it is, as I said before, manifestly improper, and the witness has so testified prior to the asking of this question, that he did not know what commission men on these yards did or did not testify to as to their ability to sell a certain number of carloads of cattle.

Mr. Miles (continuing): Mr. Strachan, it is already in the record from the testimony of a number of witnesses, that is, salesmen of each class or species of livestock, that they could not express an opinion on the question of how many they believe they could sell. That is already in this record. This record also shows that on another yard many salesmen did form and express an opinion as to how many they could sell. Now, there are your two of what we may call parallel columns, salesmen on these yards as opposed to salesmen on another yard. Do you believe that the salesmen on these yards are just as efficient and honest as they are on the other yards?

A. Yes, sir.

Q. Now, I am asking you why the difference, if you have any reason that you can assign for it, why cannot Chicago salesmen testify what their opinion is, as they have done on other yards?

Mr. O'Bryan: Now, I again object to the question on the ground that this witness has definitely stated that he does not know as to whether or not Chicago salesmen testified as to what they did or did not do, and that the question is not based upon a premise regarding which the witness has already made a definite answer, and that the only proper question that can possibly be asked this witness under those circumstances is the witness' own reasons as to why he cannot testify personally as to any guess as to whether he could sell a given number or not. It is perfectly apparent.

The Examiner: Objection overruled.

(Whereupon the question was read.)

The Witness: Well, I will swear I don't know how to answer that question.

[fol. 946] Mr. Miles (continuing): You say you do not know?

A. I do not know how to answer that question.

Q. All right, and that is the only answer you can make, by saying that you do not know how to answer. I don't want to cut you off in your answer.

A. Repeat that question again, please.

(Whereupon the question was re-read.)

A. Well, I had a question put to me a few minutes ago telling me that Gene McAdams sold 1300 cars of cattle in a year. It is evident that he was willing and knew what he was doing. Is that correct?

Mr. Miles: No, I will state for the record that we have an actual performance, that is, actual sales by Mr. McAdams, that is, for the firm, and then based upon the number of salesmen, it would average 1300 for each salesman, and he testified that he sold more than any of the steer salesmen. In other words, we have an actual performance there. Now, we have asked this witness not what the actual performance was, but what they think they could do if they had all the livestock they could handle, of all the steers they could handle, or hogs; in other words, a difference between actual performance and what their own estimate of their own ability would be. Is that situation clear to you?

A. Yes, sir.

Mr. O'Bryan: Now, I want to make a statement on the record that Mr. Miles' statement is in error, that the

actual performance, as shown by the record, the actual fact as shown by the record, is that Mr. McAdams testified that he thought the highest number of carloads that were ever sold by his firm in any one year was approximately 1300, that he was asked to produce the actual figures, and that the actual figures showed that the average number of carloads ever sold by his firm in any one year was 1139 carloads in the year 1932, and that Mr. McAdams also testified and the record so shows that he did not operate alone in the selling of those 1139 carloads on the average sales that his firm sold in any one year. Now, those are the facts and the record, I think, will bear me out. And, also, Mr. Mc-
[fol. 947] Adams further testified as to certain definite factors which entered into the reason for his firm having average receipts and the ability to sell an average which was higher than the other firms on this market.

Mr. Miles: Now, Mr. Examiner, the statement by Mr. O'Bryan with reference to the number sold is incorrect, but that is for the moment not material. I was trying to present to this witness the difference between statements of fact that appear in the record, not necessarily by oral testimony, but by any testimony in the record, a difference between a statement of fact and an opinion as to what the man could do, and I will ask the witness whether the situation is clear, that my question dealt not with how much one had actually done but as an opinion as to what they could do, and I have asked you a question why people on other yards could express an opinion on what they believed they could do, whereas, on these yards, with few exceptions, they have not been able or willing to express an opinion on what they could do. Now is the situation clear to you?

The Witness: The first question that was put to me, that in view of the fact that I testified that commission men on the Chicago market were just as honest and intelligent as they were on other markets?

Mr. Miles: Correct.

The Witness: Why, a lack of willingness to testify as a possibility as to what they might be able to do, is that correct?

Mr. Miles (continuing): Why, fairly so. Let me see if I can put the question again to you. That since, from your testimony, you believe the commission men on this market

are as honest and as efficient and so forth as on other yards, if it be true that on other yards the salesmen have expressed opinions and if it be true that on these yards they have not been able or willing to express an opinion, just what is the reason for it?

A. My answer was that I was unware of the fact that previous witnesses on this market expressed unwillingness to answer such questions, and had just had brought to my attention here, now, that Mr. McAdams testified as to his possibilities.

[fol. 948] Q. No, he did not testify as to his possibility. There is an actual sales performance in the record.

A. Well, it is pretty hard for a salesman to keep numbers in his mind. Now you are calling me here impromptu; if I had known that you were going to ask certain facts as to what I have done or the possibilities of what I might do, I would suggest that you refer to our records.

Q. Your records only show what you had done.

A. Yes, sir.

Q. Now, the question was asked you what, in your opinion, you could do.

A. I might be able to do?

Q. Yes, sir. Now, as I stated, salesmen on other yards have testified as to what they thought they might be able to sell, but they have not been able or willing to testify along that line on the Chicago yards; and why that difference?

A. I do not see any——

Mr. O'Bryan: I submit, if the Examiner please, that unless the witness knows why salesmen are not able to answer the question on these yards and unless the witness knows that in the questions asked those salesmen as to their ability, the only assumption made was that they had all the cattle that they could sell of the same kind and quality during a year's period, without taking into consideration any of the ever-changing factors during that year, that the question is an improper question and that the witness can properly only be asked about his own reasons for not testifying and as to the guess or estimate of the number of carloads that he might sell, in answer to that question.

Mr. Miles: Mr. Examiner, we have consumed too much time on this subject, and I do not want to take further time.

If the question before the witness is clear, I ask for the ruling of the Examiner.

The Examiner: Mr. Strachan, is that question clear to you?

The Witness: Yes, sir.

[fol. 949] The Examiner: Do you understand it entirely?

The Witness: Well, I cannot quite fathom the bearing of it.

The Examiner: Well, the point I am interested in is whether the question is entirely clear to you, irrespective of what your answer might mean or might not mean.

The Witness: The question, as I understand it, is the fact that Chicago commission men are as intelligent and truthful as other markets, why cannot, what is the reason the commission men on this market cannot testify to a possibility?

Mr. Miles: That is correct.

The Witness: Is that correct?

Mr. Miles: Yes, sir.

The Examiner: Now, the only thing the Examiner is interested in, and I do not care what your answer is, if the question is clear to you and you can answer it, I would be glad to have you answer it. If you cannot answer it, all you have to do is to say: "I cannot answer it."

The Witness: Things vary in facts or truth so I do not expect to express an opinion, because I could not truthfully express it.

Mr. Miles (continuing): I will ask you, do you know of any reason why the salesmen on the Chicago yards are either unwilling or unable to express an opinion about the possibility of selling capacity?

Mr. O'Bryan: I object to that question in that it assumes a premise as to which the witness has not been interrogated as to whether he knows whether or not salesmen on this market have or have not expressed an opinion on that point. Now, he cannot be interrogated as to reason unless he knows the facts, and if he does not know the facts, he has nothing upon which to base a reason.

Mr. Miles: You may assume that statement to be a fact, because I have included it in the question; and because it is a fact, as shown by this record. Take the ruling.

The Witness: Question, please.

[fol. 950] The Examiner: If the witness knows, he may answer.

(Whereupon the question was read.)

The Witness: No; on the contrary, I think that every one of them are very willing to cooperate with this investigation to the best of their ability in putting facts and not possibilities or probabilities.

Mr. Miles (continuing): Mr. Strachan, I will ask you this: To your knowledge, has this case attracted any attention on the yards, resulting in comment among the salesmen?

(Whereupon the question was read.)

A. Not to my knowledge in detriment to the investigation any more than it was being carried on.

Q. Have you heard any comment from any of the salesmen or employees of the various commission men about this case?

A. Nothing more than it was being tried here.

Q. Have you heard any comment to the effect that certain employees of the various commission men have either been unable or unwilling to answer any questions propounded by the Government?

A. No, sir.

Q. Has there been called to your mind, either directly or indirectly, by any person, by any word, written or spoken, that certain questions propounded by the Government ought not to be answered or that you should not answer them?

A. No, sir.

Q. Has there been any suggestion made to you by any person in any form whatsoever, indicating that you should not answer certain questions or indicating——

A. No, sir.

Q. —or indicating what your testimony should be, in any manner.

A. No sir, I am not biased in any way; it would not make any difference.

[fol. 951] Mr. O'Bryan: If the Examiner please, I have let this line of questions go on; it is clearly improper, it is an attempt on the part of the Government, if it is anything,

to try to impeach or deprecate the testimony of their own witness, and I submit that it also is a reflection on counsel for the Respondents, and I want the record to show that as far as counsel for the Respondents are concerned, or at least this counsel for Respondents, and Mr. Boyd, I am sure, would agree with me, has not been discussing as to these questions with any witness, and I am standing on my legal rights as an officer of this court in making proper legal objections to questions, which, in my opinion, I believe are absolutely improper questions and which no intelligent man, after mature consideration, could possibly give an answer to, except an answer which would be a mere guess, and I resent the implication in this line of questioning, both on my part and for the witness.

Mr. Miles: So far as the witness is concerned, you stated he is the Government's own witness, and therefore he does not need your protection and probably does not want it. So far as any implication that you or Mr. Boyd have made, in suggestions to any witnesses, directly or indirectly, I have not so stated, nor did I intend so to state or intimate. I previously made that statement to Mr. Boyd on the record in answer to one of Mr. Boyd's objections and I now make it to you. (Mr. Boyd was absent during the examination of this witness.)

Mr. O'Bryan: All right.

Mr. Miles: And please be assured that if I knew of any case where you had done it, I would certainly present it to some proper tribunal.

Mr. O'Bryan: And if there was any case in which I had done it, I certainly would admit that I had done it.

Mr. Miles: All right, shall we get back to the record?

The Examiner: Yes, sir.

Mr. O'Bryan: And, personally, I might say I see no reason why I should not do it, so far as that is concerned, in a perfectly proper manner, and any witness sitting here who has overheard any of this examination and cross-examina-
[fol. 952] tion could not help but draw the same deduction that I have drawn.

Mr. Miles (continuing): Mr. Strachan, you have testified and I will not attempt to quote your language, but testified in substance to this: that the salesmen were willing to come here and give facts to the Government; is that correct so far?

A. Yes, sir.

Q. But did you state that they were not willing to give opinions to the Government?

A. No.

Q. Will you just clear that up please.

A. You bet. I cannot express an opinion as to their willingness but I stated that I didn't see any reason why any of them would not be willing——

Mr. Miles: Will be willing to?

A. Will be willing to.

Q. Willing to give opinions?

A. Yes, sir, of course, it would depend a good deal upon the individual. Some individual may have an opinion that he would like to express and feel truthful in expressing that opinion and I see no reason why he should not, if he can truthfully do it.

Q. You know, Mr. Strachan, do you not, that in a great many lawsuits there are what is called opinion evidence. It may be the case of two physicians testifying on sanity or insanity, and you know the opinion of these experts disagree. You also know that the opinions of experts on ballistics disagree and in those cases that there is no question raised as to the honesty of opinion. It is simply an honest disagreement. Now, I will ask whether you have heard any of the salesmen or employees of any kind or owners of various market agencies, either corporate owners or partnership, express any views that anyone should not express an opinion when asked for an opinion?

Mr. B'Bryan: Now, before you answer that question, Mr. Strachan, I want the record to show the questions I am going to ask you. You know, do you not, that medical experts, before they pass opinions, found them on certain facts; and you know, do you not, that ballistic experts, before they express an opinion, found them on certain [fol. 953] definite facts; and I take it that if you were given certain definite facts upon which you could base an opinion that you would be very willing to give an opinion based upon those facts, but that when you are asked a question so general in nature which leaves it to you to assume all the facts on a varying market, day in and day out, for a period of a year, that it is humanly impossible for you to assemble the facts upon which to base a proper opinion, isn't that true?

The Witness: That is what I have been driving at for some time.

Mr. Miles: Beg pardon?

The Witness: That is what I have been trying to drive at for some time.

Mr. Miles: That is exactly what we are all trying to drive at. As witnesses on other markets have testified according to this record that they do have an opinion, just why they could not on this market, you are not able to wholly and satisfactorily answer that question, is what I am trying to get at. In answer to Mr. O'Bryan's suggestion about experts, you also know, as a matter of fact that there is a difference between a hypothetical question wherein an opinion of witnesses was asked, and his only knowledge of facts was based upon testimony to a question based upon expert knowledge of facts; do you know that that difference occurs?

The Witness: Yes, sir.

Mr. Miles (continuing): And, in your case, it is only a question based on expert knowledge of facts.

Mr. O'Bryan: Now, I object to that statement of counsel. That is an assumption of counsel that neither he nor the witness can state as a fact, nor I can state as a fact, and I take exception to it because I think it is improper and that this witness, when he is asked a question of that kind, is not testifying as an expert and he has not been qualified as an expert to testify upon a question of that kind.

Mr. Miles: No argument.

The Examiner: Well, as I understand it, there is not any question pending on the record anyway.

(Record closed. Record opened.)

[fol. 954] Mr. Miles: Now, Mr. Strachan, based upon your knowledge of the facts, as they exist on the stockyards, you do know, do you not, that any salesman can sell one carload in a week, taking conditions just as you find them?

The Witness: Could he sell a carload in a week?

Mr. Miles: Yes, sir.

The Witness: Possibly.

Q. And do you not know that they actually do that, if they have the receipts?

A. Do I know they do that?

Q. Yes, sir, sell at least one carload per week, if they have the receipts?

A. I would think they would, yes, sir.

Q. Surely. That is based upon your knowledge of the facts and the salesmen and all the surrounding conditions, is it not?

A. Yes, sir.

Q. Now, let me ask you this: Based upon your same knowledge, do you not know that salesmen on these yards, if they have the receipts, sell as much as 500 cars?

Mr. O'Bryan: I object to this line of questioning as being simply argumentative, that no definite period is fixed on which the question is based, that no surrounding circumstances under which 500 cars may be sold or not sold by a given salesman are stated to the witness, and that the witness can in an answer to a question of that kind, do nothing but make a pure guess.

Mr. Miles: Now, of course——

Mr. O'Bryan: Now, it is very apparent that any salesman, if he were to sell cattle or steers at a price of 50 cents or one dollar under the market for that day, and he had the supply available, he could sell 500 cars, while if he had a price which was 50 cents or one dollar above the market, he might have to hold them over for five days. The record is clear on that. That the market changes from day to day, and this is not a proper question, and it is merely argumentative and the witness has already answered the ques-[fol. 955] tion completely, stating that it is impossible for him to make a guess.

Mr. Miles: Will the reporter read the question?

(Whereupon the question was read.)

Mr. Miles (continuing): Not that they could sell, but they actually do sell in a year's time?

The Examiner: As I understand that question, Mr. Strachan, that has gotten away from the question that has been discussed at such great length as to what they could do if they had an unlimited number of cattle to sell, and that question is directed at what they have done. Now, if you know, you may answer; if you don't know, all you have to do is say so.

Mr. O'Bryan: If that is, Mr. Strachan, your understanding of the question, is it?

The Witness: The question is, under conditions, could I sell 500?

Mr. Miles (continuing): No, do you know that other salesmen actually have sold 500 carloads of cattle in a year?

Mr. O'Bryan: Then I submit the records of what other salesmen have done are the best evidence of what they have done, and not what Mr. Strachan knows or does not know.

Mr. Miles: I am not asking what they have done. I am asking if this witness knows.

The Examiner: The witness may answer whether he knows.

The Witness: Put the question to me again, please.

Mr. Miles: Will you read the question, please?

(Whereupon the question was read.)

The Examiner: The question is simply, do you know?

The Witness: I think the records already show that that has been done.

Mr. Miles: And do you know that to be true?

A. It is in the records, isn't it?

[fol. 956] Q. No, I am asking if you know?

A. I expect it is.

Q. Do you know the greatest number of cattle that any salesman on these yards have actually sold in the course of a year?

A. No, I don't.

Mr. O'Bryan: I object to the question on the ground that the records themselves are the best evidence of what any salesman sold in any year.

Mr. Miles: I did not ask what they had sold.

Mr. O'Bryan: What difference does it make whether he knows or not. It is not proper evidence.

Mr. Miles: It is not a proper objection and will not be until followed by another question.

Mr. O'Bryan: All right, I will object on the ground that it is immaterial.

The Examiner: The witness has already answered the question he did not know, so all the objection and discussion of it seems to me to be immaterial.

Mr. Miles (continuing): Mr. Strachan, have you attended any meetings of the Exchange, whether formal or informal regarding this hearing now going on, either before it actually came on or after, where this hearing was discussed?

A. Meeting of the Exchange, of the Live Stock Exchange?

Q. Of the Live Stock Exchange.

A. No, sir.

Q. By that I mean the members of the Exchange in a called meeting or informal meeting?

A. No, sir.

Q. Have you been in session or, that is, have you been in conversation with any group of the Respondents or their officers or employees where the hearing and the testimony to be adduced was discussed.

A. No, sir.

[fol. 957] Mr. O'Bryan: I am not objecting to this line of questioning, but I submit to the Examiner that it is immaterial whether any witness for a Respondent firm in this case attended any meeting or had any conference with his attorney in connection with the case.

Mr. Miles: I did not say his attorney.

Mr. O'Bryan: I don't care whether it is his attorney or his auditor or who it is.

The Witness: I understood the question as a conference or a meeting.

Mr. Miles (continuing): Or informal conversations?

Mr. O'Bryan: If the Government takes the position that a client cannot consult with his attorney or his assistants previous to the trial of the case, then I think they are stretching the point pretty far.

Mr. Miles: I think that the counselor, let us say, misunderstands the question.

Mr. Mudd: I would like to make a statement in that connection, that there has been no meeting, either formal or informal, with the members of the Chicago Live Stock Exchange who are Respondents in this case in which either Mr. Boyd or I appeared, and to my knowledge there has been no such meeting without our appearance, so it was neither with or without our presence.

Mr. O'Bryan: I might submit, Mr. Mudd, that if there had been such a meeting, you were perfectly within your rights to consult with your clients as to the conduct of this case.

Mr. Mudd: I am sure Mr. Boyd has not discussed this subject either individually or collectively with the Respondents, and I know that I haven't.

Mr. Miles: Mr. Mudd, there is a deliberate attempt to befog the issue. I deliberately acquitted Mr. O'Bryan and Mr. Boyd, so far as I have any knowledge of it, from any

attempt or intent to coerce, intimidate or influence these witnesses, so this is merely a smoke screen now being thrown out. There is a question on the record to the witness.

Mr. O'Bryan: In regard to the smoke screen being thrown, I will say the questions seemed to me a smoke screen thrown up by Government counsel to account for [fol. 958] what he claims is an inability or unwillingness to answer questions which are not possibly able to be answered.

Mr. Miles: With the exception of your last statement, you are 100 per cent correct.

(Whereupon the question was read.)

The Witness: No, sir.

Mr. Miles (continuing): Mr. Strachan, do you recall blackboards that were in one of the rooms of the Exchange Building setting up so-called cost studies for various Respondents?

A. For various what?

Q. Various respondents, that is, commission men.

The Examiner: Read the question.

(Whereupon the question was read.)

The Witness: Never heard of them.

Mr. Miles (continuing): And never saw any of them?

A. No, sir.

Q. They were never discussed in any way?

A. No sir.

Q. And has there been any attempt on the part of anyone to suggest to you directly or indirectly by written word or spoken word, by a formal conference or informal conference, or by information conversation, what testimony you should avoid or what testimony you should give?

A. No sir.

Q. By any person whatsoever?

A. No sir.

Mr. Miles: I think that is all, then.

[fol. 959] Cross-examination:

Q. Mr. Strachan, Mr. Miles would not ask you to give the r[illegible]ons why you could not answer a general question

of the nature of the question or questions which he put to you, and I presume that you have some valid, definite reasons why such a question could not be answered intelligently?

Mr. Miles: I object to counselor's testimony, because it does not clearly reflect the facts. I asked this man to give his opinion as to the various commission men, or his own view.

Mr. O'Bryan: You never asked him for his own views.

Mr. Miles: And I reply that I did ask for his own views.

Mr. O'Bryan: All right, I will ask him again.

Mr. Miles: Perfectly all right. At this time, when you testify, please state the facts correctly, or say as you understand them.

Mr. O'Bryan: Well, that is, as I understand them. The record will show what you asked him.

The Examiner: The witness may answer.

(Whereupon the question was read.)

Mr. O'Bryan (continuing): That is, in connection with the amount or number of carloads of steers which you could sell in the year 1932 or any given year?

A. Do you mean he must have some reason why he could not?

Q. Answer the question the way it was put to you.

A. Because I don't know.

Q. And it would be impossible for you to know how to answer the question unless you first took into consideration all of the conditions as they existed day by day, the buying demand, the receipts, and everything else connected with the market each day before you could intelligently answer such a question, wouldn't it?

[fol. 960] A. Well, I suppose you have covered it all. There are quite a few conditions that come up which in one day, one hour, are not the same down there. They vary all the time, different conditions.

Q. There are no two days alike?

A. Never are alike.

Q. No two hours alike in a year's experience on this market, are there?

A. No, sir.

Q. And the prices vary from day to day and from hour to hour and from your experience as a salesman is it not a fact that if you are permitted to sell cattle at a price which is considered under the market, there is no selling effort connected with the sale of such cattle, is there?

A. No, sir.

Mr. Miles: Objected to as hopelessly incompetent.

The Examiner: Objection overruled.

Mr. O'Bryan (continuing): If, on the other hand, you should receive cattle from a country shipper who would request that you hold those cattle for a certain price and that price on the day they were received was way above the current market and continued to be above the current market day by day, it would be humanly impossible for you to sell them at the price which the country shipper had fixed on them, isn't that so?

A. That is quite true, but I testified this morning that in selling cattle, I used my own judgment as to what to ask for them and what I thought they would bring under market conditions. We do have cases where a feeder may come to market who is not very well posted on the values on possibly the particular grades of cattle, who might ask me what I figured they will bring. He, in turn, may be expecting seven cents for them. To my best knowledge, they would not bring over five and three-quarters. In such cases we have to work them out, do the best we possibly can. Sometimes, on the advice of the owner, we are obliged to hold them over because they will not sell up to his expectation. Does that bring it out?

[fol. 961] Q. Yes, and if on another certain given day, Mr. Strachan, the big packers have received large shipments of direct purchases, and their killing complement is complete, that is, they don't need to come on this market to buy any cattle for their kill, that decreases the buying demand, does it not, and automatically increases the selling difficulties on the market; in other words, there is not the competition that there would be if the big packers were in the market to fill up what they considered their killing complement on that day?

A. It is true.

Q. So that the whole thing day by day is based upon the

law of supply and demand, the price of by-products, the condition of the fresh meat market, and innumerable factors which have to be taken into consideration each day and each hour on this market?

A. Just as I testified this morning.

Q. And in fixing your price for livestock, the price at which you think you will sell it, you have to take into consideration as a salesman all of those varied factors, do you not?

A. Yes, sir.

Q. Has there ever been any such thing in your experience on the Chicago market as all of the kind and quality of livestock of a given kind which you could sell, such as steers, regarding which you were interrogated?

A. Read that again, please.

(Whereupon the question was read.)

A. I would have to have that clarified.

Q. I mean for a year's period, has there ever been receipts on the Chicago market constituting solely all steers of a given kind and quality.

A. Yes, that is true at times.

Q. But it has never run for a year's period.

A. Oh, no, there are certain times of the year that we are very apt to get a certain class of cattle. Say, for instance, at the present time and for the past three weeks, [fol. 962] feeders of plain kinds of cattle have been liquidating to get out of the way of the competition of the grassers which are now starting to come and will come from now on.

Q. But that condition only exists during a short period of the year, does it not?

A. It does.

Q. And three months from now, there might be none of that class of cattle received on this market?

A. They will be all out of the way, the plain quality fed cattle.

Q. That is the point I am trying to bring out, that classes of cattle vary from month to month and week by week, as far as the receipts on this market are concerned?

A. Yes, they do.

Redirect examination:

A. In your opinion, could your firm, taking it as a whole, have sold more cattle in 1932 or in the present year of 1933 than you actually did sell, if you had had them to sell?

Mr. O'Bryan: Now, I object to that type of question in that it is ambiguous, in that it does not refer to any distinct type of cattle and the record is clear that cattle vary as to grades, quality, price, and that unless all the factors are stated to the witness in the question, it is manifestly an improper question.

Mr. Miles: Take the ruling. No argument.

(Whereupon the question was read.)

The Examiner: Is there anything about that question you don't understand or any additional facts that you need?

The Witness: Well, I hardly see the point to the question; if you will kind of clear it up—does the question mean whether we could have sold more cattle, had we had them?

Mr. Miles: Yes, sir.

The Witness: Is that the point?

[fol. 963] Mr. Miles: That is correct.

The Witness: Well, I suppose we possibly could have. However, I don't know just exactly what we did during that period.

Mr. Miles (continuing): Now, in your attempts to get new business or when you attempt to get new business, you do that in the belief that you can sell the cattle if you get them to sell, do you not?

A. We certainly do, or we couldn't solicit.

Q. Now, if your firm would receive let us say 100 carloads a year more than you received last year, in your judgment, would you put on an extra salesman?

Mr. O'Bryan: Now, I object to that question in that it is incomplete, that no foundation is laid for it; there is no evidence here either as to what Wood Brothers did sell or that this witness knows the number of carloads that they sold. There is no proper foundation laid for such a question.

Mr. Miles: I am not interested in what they actually sold. I am asking the witness if they received 100 carloads a year more than they did receive.

Mr. O'Bryan: More than they actually receive?

Mr. Miles: In his opinion, would they put on an extra salesman.

Mr. O'Bryan: I still make the same objection that he does not know the receipts or that there is no foundation laid as to what the receipts were or that the witness knows what the receipts were and that it is humanly impossible to answer a question which is not founded upon some facts which are within the witness' knowledge.

The Examiner: Do you need any additional facts or any qualifications on that question in order to intelligently answer it?

The Witness: Well, I would think there would be quite a few provisions to have to be met. It would depend a good deal upon the year, the time of the year, it would depend a good deal upon market conditions and various phases.

Mr. Miles (continuing): In the present condition of the record, you cannot answer the question?

[fol. 964] A. No, sir.

Q. Mr. Strachan, you have testified that you sell, and by "you" I mean your firm—and your cattle salesmen would sell all the cattle you receive over the course of a year, do you not?

A. Beg pardon?

The Examiner: Read the question.

(Whereupon the question was read.)

Mr. Miles (continuing): You sell all the cattle you receive in the course of a year?

A. I personally?

Q. You plus your other salesmen?

A. Yes, sir.

Q. And you sold, regardless of whether they are fat or lean, whether slow days or fast days, at the end of the year you have finished selling all of your receipts, haven't you?

A. Yes, sir.

Q. Just what difference is made by a fast day market and a slow day market with reference to your selling?

A. You mean what amount of time that it requires to satisfactorily sell the cattle?

Q. Yes, sir.

A. Well, now, that is kind of a hard one, too. I might start out with a fast market and get a few cattle sold at a very good price and I have seen the time that in ten minutes the market has turned the other way and I have been stuck with them until 3 o'clock.

Q. All right. Regardless of whether slow or fast, you will sell all that you receive, day in and day out, and isn't it true that the only difference between the two days is it will take you longer to sell on a slow day than on a fast day?

A. Well, as I testified before, we very seldom hold cattle over.

[fol. 965] Q. Yes.

A. There are instances now and then that we are simply obliged to do so.

Q. Have you held them over on a fast day?

A. I have on advice of a shipper, yes.

Q. Have you held them over on a fast day because you could not sell them?

A. No, sir.

Q. Never in your life?

A. That would hardly be improbable not to be able to sell them on a fast market.

Q. Well, now, Mr. Strachan, you have told us that you do sell everything that you receive, and when I say "you" I mean you plus your other two salesmen.

A. Yes, sir.

Q. Regardless of the kind, condition or quality that comes to you, I will now ask you this: Taking your experience as it has run, if your firm were to receive 100 carloads per year more than you are now receiving and they were to come just as you had them come to you in the past, would you put on an extra salesman in order to meet that demand?

Mr. O'Bryan: I will make the same objection. The question is vague and ambiguous, no proper foundation laid for it unless the facts are all taken into consideration as to the conditions surrounding the ages and what the sales actually were; it is an improper question on the ground it has no facts upon which the answer could be based contained in it.

The Examiner: If you know, you may answer.

The Witness: It is impossible for me to tell whether I would know.

Mr. Miles (continuing): Well, now Mr. Strachan, you have testified in answer to Mr. O'Bryan's question and I am not now quoting you, but giving the substance of it, that one reason you could not answer Mr. Dagger's question as to your potential selling ability was that the cattle or your receipts were not all steers, that they did not come that way, is that correct?

A. Receipts that we have are not all steers, yes, sir.

[fol. 966] Q. Yes, and was that the reason you could not answer Mr. Dagger's question?

A. In respect to what?

Q. How much you could sell in a year.

A. Why, not necessarily; I could not form an opinion as to what I might do in a year.

Q. And could you form such an opinion, taking the livestock as it comes to you, that is, it may be fat steers, it may be stockers, it may be each and everything that comes to you in the course of a year; do not limit your answer to fat steers, or to any kind, but take them just as they come and take all the days and conditions as you meet them throughout the year; you have fast days and slow days, hot days and cold days. Taking those things into consideration and basing it upon your own experience, could you now answer the question?

Mr. O'Bryan: I object to that question on the ground that it calls upon the witness to assume conditions which general knowledge knows that no human being could possibly assume and that is the daily experience, day in and day out, of a market such as the Chicago market over a year's period of time, and without a knowledge of those conditions it is apparent that nobody could answer a question based upon those conditions which he might be called upon to assume.

(Whereupon the question was read.)

The Examiner: If you feel that you can intelligently answer the question, you may do so.

The Witness: I do not feel as I could express an intelligent answer.

Mr. Miles (continuing): Now, what facts or circum-

stances would you require to be put before you in order to express your opinion as to how much you could sell if you had the livestock to sell?

A. That question, again, please,—what facts would I need?

Q. Yes, in order to express an opinion.

A. I don't believe I could express an opinion until the facts were presented.

Q. Just what facts would you want presented in order to enable you to express an opinion?

[fol. 967] A. If I were to sell 5000 cattle in one day, I would have to have them to see if I could do it or not. I do not know if I could.

Q. Then, is that only, that is the only reason that you are unable to express an opinion as to what you could sell, based upon the fact that you have never had as many to handle as you could have handled?

(Whereupon the question was read.)

A. Not necessarily.

Q. Does that complete your answer?

A. Yes, sir.

Q. What other facts would you want in order to enable you to form an opinion?

A. I do not know; to form an opinion, the facts would have to be completed and made specific to that effect. I have never, as I say, if I were given 5,000 cattle to sell in a day, I don't know if I would hold out or not.

Q. All; could you on 3,000?

A. I couldn't say; God would have to be my guide during the day.

Q. Are you familiar with the Chicago Daily Drovers Journal?

A. Yes, sir.

Q. Do you regard that as a newspaper that is authentic?

A. Yes, sir.

Q. Mr. Strachan, I am going to ask you to do this. I am handing you a folder of the Chicago Daily Drovers Journal; the first paper in here is marked June 5, that is dated Monday, June 5.

A. This year?

Q. Of this year. I am going to ask that you read as carefully as you wish, or make as cursory an examination as

you may wish, whichever will satisfy your mind as to the conditions prevailing on June 5, and then——

[fol. 968] A. Is that the day we had the 21,000 cattle?

Q. The receipts, I believe, are shown here. I didn't check them up. And, after reading this, I am going to ask you this: How many, in your opinion, you could have sold if you had had them to sell?

Mr. O'Bryan: All right. Now I want to object to that question on the ground that it assumes that this witness can, from reading the Drovers Journal from June 5, state how many cattle he could have sold if he had had them, without asking the witness to assume any of the other facts surrounding the sale of those cattle which might have occurred in the witness' own business on the day in question, or without assuming either the type or the grade or quality of the cattle which he might have received on that day, or without assuming the price which might have been set by country shippers shipping to him on that day; and the fact as to what the witness could have sold on that day is best evidenced by the fact of what he actually did sell on that day and the records themselves are the best evidence of that fact. For that reason, I object to the question as not being properly founded, not being complete, and being absolutely ambiguous.

Mr. Miles: Mr. Examiner, I will just make on statement; I refrain from further conversation over it. I just say this: The fact of what this witness did sell is in no way material to what he could have sold if he had more supplies to sell. Take the ruling.

The Examiner: Mr. Strachan, one of the objections made was that the question was ambiguous, and I don't want you or any other witness to answer any question that is ambiguous. I want the question clear before the answer is made. Is the question asked ambiguous to you?

The Witness: No, sir; I feel as if I understand it.

The Examiner: Do you need any other facts, other than what have been given to you, to intelligently answer that question?

The Witness: If I understand the question correctly, it is how many cattle I could have sold more than I had, under market conditions on Monday, June 5th.

Mr. Miles: Not more than you had, Mr. Strachan,—just omit that. You may have had one load or a thousand. Just how many could you have sold?

[fol. 969] The Witness: I cannot answer that question intelligently.

Mr. Miles (continuing): All right. You read the statement in the papers, the Drovers Journal, did you?

A. At the market?

Q. Yes.

A. Yes.

Q. Read as much of it as you thought necessary?

A. Yes sir.

Q. I will ask you this: You were present several afternoons during this hearing, were you not, when you had been subpoenaed as a witness and we did not reach you?

A. No, sir.

Q. Were you ever present at any time during the hearing in response to our subpoena?

A. Once. I was subpoenaed at 2:30 and waited until 4:00. That is the only time I appeared at this hearing.

Q. Do you recall at that time whether a similar question was propounded to a witness on the stand as have been propounded to you?

A. In regard to that paper?

Q. No, in regard to selling possibilities.

A. No, sir; I think most of the testimony I heard was in regard to contract cattle or something in that respect, about western cattle. I happened to be visiting with somebody else there and picked up a part of it or heard it at times, but nothing in that respect.

Q. And did you get any suggestions from anything that transpired during the time you were here that when counsel made an objection, that that was a question which should be shied off from?

A. There is nothing——

Mr. O'Bryan: Now, I object to that statement.

Mr. Miles: It is a question.

Mr. O'Bryan: Of counsel for the Government and take [fol. 970] exception to it. Counsel for these Respondents, or these Respondents, that this counsel is not making any objections or has not made any to have the witness shy off from the questions asked, and I think the record will

clearly indicate that every objection made by counsel for the Respondents has been a perfectly proper, legal objection and simply because counsel for the Government cannot get the questions answered that are impossible to answer, there is no reason to cast aspersions either upon the witness or counsel for Respondents.

Mr. Miles: No aspersions cast upon either one.

The Examiner: Well, Mr. Miles, as I understand it, the witness has stated that nothing has occurred to influence his opinion, or the answer to these questions. Isn't that your understanding?

Mr. Miles: Why, up to the present time, his answers were clear. Now, this one question is before us.

Mr. O'Bryan: I am not objecting to a question. I am taking exception to the question. It is perfectly all right for the witness to answer the question, but I am taking exception to the form of the question and intent of the question as I understand it.

(Whereupon the question was read.)

The Examiner: You may answer.

The Witness: There is nothing that I heard in the hearing that would influence me either way.

Mr. O'Bryan: You might let the record show, that in my opinion any witness who hears an objection will naturally listen to the objection, and see that his answer is clear and that it follows the facts. That is nothing but human nature.

Mr. Miles (continuing): Mr. Strachan, you used the figures 5000 head of cattle; would that indicate, in your mind, that you believe you could sell 5000 head in a day?

A. It was just a ridiculous remark on my part.

Q. Well, had it been 1000 in a day, would it——

Mr. O'Bryan: I object to this line of argument. The witness has answered these questions perfectly clearly [fol. 971] and this is simply argumentative and loading the record along improper, immaterial questions, which are based solely on guesses. It certainly is improper direct examination.

(Whereupon the question was read.)

Mr. Miles (continuing): In your opinion, could you have sold them?

Mr. O'Bryan: I object for the same reason as previously stated.

The Examiner: Objection overruled.

The Witness: I am sure I do not know.

Mr. Miles: I think that is all.

Mr. O'Bryan: That is all.

Government Exhibit No. 49 (Witness Bachman), market agency cost study, 1932, was received in evidence.

Government Exhibit No. 50, the Salaries Questionnaire, market agencies, 1932, was received in evidence.

Government Exhibit No. 52, being government cost study (Witness Bachman) of order buyers, 1932, was received in evidence.

Government Exhibit No. 57, Salaries Questionnaire (Witness Bachman) 1931, was received in evidence.

Cross-examination:

I stated that I do not attempt to determine what reasonable costs are or what reasonable income is.

The purpose of this cost study is to draw up information in such a way that it will be of assistance in determining [fol. 972] what reasonable income per unit or reasonable expenses or cost per unit are.

The method which we used here, single deck experience, in converting truck-ins and speculator receipts to a carlot basis, would make the unit cost for a car lower than if the combined straight rail single or double deck experience had been used.

The cost to firm No. 58 to sell one head of hogs,—that firm received or handled a total of 64,913 hogs under all methods of arrival. The total expenses leaving out for the moment the interest on capital was $14,959.34. The per head cost would therefore be the division of the number of head into the total expenses, and would be $.2305 per head. That is not the cost of handling a truck in animal. It is the cost for all animals in composite. The differential study on page 433 shows the per head cost of truck ins. The amount shown there, without the interest on the capital, is $.2729. I got $.2729 by dividing the number of truck in heads—36,271 into the gross expenses which have been allocated to truck-in volume. I got the gross expenses allocated to truck in volume by taking each classification

of expenses shown on that sheet in total and distributing them to mode of arrival, as explained heretofore, and took the experience of that firm on carload hogs and then determined the number of equivalent carloads to get $17.74. To get $17.74, 558 car equivalents were used; however, for [fol. 973] truck ins we also made a calculation for the head. I, personally, do not believe in reducing anything to carlot equivalent. I think the head basis is by far the better basis to use, but we had here a carlot tariff and we have got to test that carlot tariff. As to whether this is a test for carlot tariff, and not a test for drive-ins, I had no way of knowing, whether or not the carlot tariff was going to continue in the future. I had to assume insofar as it was in effect that it would be continued in effect after this rate hearing, and for that reason made the car unit study.

In order to take my figures and tell you what the cost of salesmanship is at Chicago, actual, in the case of a straight carload of cattle, I would have to recap all of the figures shown under cost per car, number 1, straight rail, single ownership. In the case of firm 58, page 336, that amount shown is $5.35. I would have to go through all of these firms and combine the gross selling cost and combine the car or head volume and divide one into the other. I have not done that. I don't know the difference in selling the straight carload of cattle in 1931 and 1932. I cannot determine that fact by an examination of any of the figures that are in this record, without extensive calculations.

With reference to the business getting and maintaining, the experience of the firms under audit with reference to that cost, the calculations will be found on pages 103 to 105. The experience of firms vary; the average for the market, that is, taking the commission men only, and com- [fol. 974] paring the business getting and maintaining salaries and non-salary expenses together, comparing them with the gross income, shows the percentage average for the market of $19.47.

The firms at Chicago handled slightly over 14% less business during 1932 than 1931.

For 1932 the total expense after adjustment is $3,121,363.82; for 1931 the expense was $3,591,908.03. The percentage in decrease in expense was slightly over 13 per cent. After adjustment all the firms included in my cost study made a total of $149,470.99 in 1932, and made $226,232.73

in 1931. That includes 103 firms for 1932, and in 1931 I think it was 100.

The average per firm would be about $1,450.00 for 1931. It would be about $2,262.00 average per firm, and using 1931 and 1932 as a basis for the experience at this market, it shows both declining volume and declining profit under the existing schedule of rates.

For 1932, firm No. 45, the cost of salesmanship, that is selling and buying, is $8.09 per car; for 1931, $9.82. The owners' salaries for that firm in 1931 were $16,159.94; and in 1932, $13,033.32.

The business-getting and maintaining cost for firm 45 for the year 1931, cattle and calves, the salary allocation to soliciting was $8,295.11, and the business getting and main-
[fol. 975] taining expense, non-salary, the total amount allocated for that was $6,363.22; total, $14,658.33. The non-salary per carload was $1.69; salary $2.21; total $3.90, and for the same items, per car, for 1932, for the same firm was $1.66, non-salary; $1.34 per car salary; a total of $3.00 per car. Ninety cents less was spent for business-getting and maintaining by that firm in 1932 than was in 1931.

The same cost with reference to hogs, firm 45, business-getting and maintaining salaries, 1932, was $2,257.31, or $1.74 per car; non-salary business getting and maintaining expenses, $1,829.33, or $1.41 per car; total, $3,086.64, or $3.15 per car; for 1931, soliciting salaries for firm 45 for hogs, $2,510.80, or $1.92 a car; non-salary business getting and maintaining expenses, $1,777.23, or $1.36 a car; total $4,288.03, or $3.28 a car.

Q. Now, what do you have to indicate whether or not this firm in expending $1.74 and $1.41, making a total of $3.15 in 1932, expended more money or less money than was necessary in the proper conduct of that business?

A. We made no investigation to determine whether the amount so spent was proper or improper.

Q. Is that true also of 1931?

A. Yes, sir.

I would consider that fairly consistent in the case of hogs; they are sufficiently close together to be considered as consistent. In 1931, firm 45, the firm in question, had a total of 1311 cars of hogs, containing 126,531 head. In 1932 1,299
[fol. 976] cars containing 117,651 head.

I would figure a carload for that firm in 1931; I mean by that, the carload equivalent of 73 head, and for 1932, 65 head.

Mr. Boyd (continuing): Have your cost figures, in any case, been followed by the Secretary in arriving at salesmanship costs?

(Whereupon the question was read.)

Mr. Miles: Objected to, absolutely immaterial what the Secretary has done in the past cases.

The Examiner: Objection sustained.

Mr. Boyd (continuing): Did you testify that, in the Kansas City case, he did not use it, is that correct?

A. He did not use our unit determination of salesmanship.

Mr. Boyd: And you do not know of the cases that he did, where he did use your cost study?

Mr. Miles: Objected to.

The Examiner: Objection sustained.

Mr. Boyd: Mr. Examiner, you permit him to answer what the Secretary did not do and now you refuse to let him answer what he did do, is that correct?

The Examiner: Well, the Examiner has had trouble with these questions, trying to separate them into what the witness is testifying to from his own knowledge and opinion and as to what the Secretary may do. Now, from now on, when the question is not clear so that the Examiner can rule clearly, he is going to sustain the objections.

Mr. Boyd: Well, I want to get it clearly now, that under your ruling, we are permitted to learn what the Secretary did not do but we are naturally very anxious to learn what he did do and you won't let us find that out.

The Examiner: If it was that way then it was because the question was not clear to the Examiner and he gave you [fol. 977] the benefit of the doubt. If he had construed the question as dealing with what the Secretary is going to do or what is in the mind of the Secretary, he would have sustained the objection to that.

Mr. Boyd: Well, Mr. Bachmann, do you know whether or not the Department has actually determined and did actually determine, after having used your cost figures, to the

fullest extent desired, what the reasonable costs were for the various functions performed by these Respondents for the year 1931?

Mr. Miles: Objected to as immaterial.

Mr. Boyd: And whether or not the Department has already arrived at its opinion as far as 1931 is concerned?

Mr. Miles: Renew the objection.

The Examiner: Objection sustained.

(Whereupon the question was read.)

Mr. Boyd: Now, Mr. Examiner, I offer to prove by this witness that if he be permitted to testify that the response to that question would be "yes".

The Examiner: Offer of proof denied.

After adjustments were made, the resulting gain for those firms which had a gain was $210,973.85; and the resulting loss for those firms which had a loss shows $66,329.15. The cost study figure is $144,644.70 gain net for all firms; and that does not include salaries of owners nor adjustments in salaries of owners except in the case of the firms that made a profit. In the case of those firms which made a profit, we took the profit in as owners' salaries, and in the case of those firms which showed a salary or drawing account for the owner that is included. That is about four and one-half per cent of the total commissions collected. [fol. 978] The tariff provides a rate of 40 cents a head for selling calves. I cannot give you the cost of selling a calf on the market according to the figures I have prepared. Assuming that the tariff provides 75 cents for cattle, single ownership, unmixed carlots, 20 head or less, with a minimum of $17.00 and a maximum of $21.00, I cannot tell from the cost study the average cost of selling a carload of that type of livestock on the Chicago market. For the purpose of our cost study, the cattle and calves have been combined. The tariff provides different rates for cattle and calves; I did make it up as a consolidated proposition because they are handled together. I mean they are handled together very frequently. As to whether or not they are sold together according to the testimony I have heard in this case, in most cases I would say that a different individual sells calves and another individual sells fat steers, but I understand that the same salesman sells calves and butcher

stuff, and my understanding is that calves come under the classification of butcher stuff. As a general proposition, I understand that, generally speaking, calves arrive at the Chicago market in small numbers compared with the total number of cattle in the car. The cost study shows the comparison of cattle and calves, that is, the total number of head of cattle and the total number of head of calves. The total number head of cattle was 2,309,287, and the total number of calves being 414,368. Of that number the calves arriving in straight cars were 14,985 single owners, [fol. 979] and 5,513 plural owners. They bear a ratio of about 5% to the total, so that only 5% of the calves arrived in unmixed lots. I wish to correct a statement made just a moment ago. That 5% represents the total number of calves that came calves only. There may be additional calves coming alone in truck-ins and speculators, and of course we have the rail calves. What proportion of those come not mixed with cattle, I do not know. I do not know whether that would exceed 10%. I could not give you information with respect to the cost of selling a single deck of calves on this market during the year 1932 without segregating the calves out of the cattle and making a separate determination on them, by reason of the fact that the tariff carries a separate rate; I have not done that, inasmuch as the calf rate is under investigation, because in my opinion it is almost an impossibility, if not an impossibility, to make a separate determination for calves, as distinguished from cattle, because the two are handled together and also because in my opinion a carload of calves would cost approximately the same to handle as a carload of cattle, and by using carloads, we can determine at least approximately the cost of handling either one of those two units. I reach that conclusion because of a study of the conditions under which operations are conducted and the hearing of considerable testimony on the subject. I appreciate that as to the head, there may be a lesser cost per head for calves than there is for cattle, because they come in greater numbers per car; but using the car and having in mind that the same individuals handle cattle as handle calves, I cannot [fol. 980] see where there could be on a car unit a very great difference in cost for cattle than there is for calves. I understand that calves, according to the testimony, are handled with cattle to the cattle alleys ordinarily, and are

handled different from that time on, the same as if they were sheep. The yardmen who yard cattle also yard calves; the salesmen who sell cattle also sell calves; the office man who makes out account sales for cattle also make them out for calves. Cattle and calves are handled by the cattle department, and I don't understand that there is a distinction between cattle department and calf department. I have not heard the salesmen who sell the most calves testify, but it seems to me just ordinary common sense, common business sense I might say, knowing how small the percentage of calves is to the cattle, that these various firms get, that they are not going to set up a separate individual to handle that small proportion of their volume and incur the cost of doing that.

Government Exhibit No. 56 (Witness Bachmann) Cost Study for the year 1931 was received in evidence.

I have not made any comparison of the income and expenses for the years 1930, 1929 and 1928 for the Respondents in this case. As to whether that could be done by an examination of forms P. S. 3 reports and thereby come to the same conclusions that were reached in the case of 1931, I don't recall how long back we have the P. S. 3's in Washington. At one time it was the policy there to keep [fol. 981] them only for three years. Now, whether that information is still available, I am not in position to say at this time. There were seven cattle salesmen employed by firm No. 45 during 1931; they sold cars or car equivalents 3,760.

I know of no way in which the extra cost of the extra services can be determined.

The Government rested 4:30 P. M., July 7, 1933.

Mr. J. R. McGlashan, a witness, called by the Respondents, testified as follows:

Direct examination:

I am a farmer and real estate man. On my farm I handle cattle, hogs and sheep. I have attended this hearing this afternoon. I am here for the purpose of purchasing sheep. I intend for Mr. Merrion to make those purchases and I

have been waiting for him to be released so that he might purchase the sheep for me. I have patronized the Chicago market as a shipper of livestock for about 46 years. I recognize the fact that I will have to pay Mr. Merrion for making a purchase of the sheep that I intend to purchase on this market for feeding, and I know what the charge is per car.

I believe that the service which Mr. Merrion renders in the purchase of the sheep is worth the amount which he charges. If we get good service as a patron of the Chicago [fol. 982] market for over 40 years, I do not believe that the charges made for the buying of sheep by the commission firms at Chicago are excessive or more than the shipper should pay for the services that he receives. I don't believe that the charges made for selling sheep at Chicago are excessive. I do not believe that they are more than they should be, under existing conditions.

Cross-examination:

I reside at 3933 Clarendon Avenue in Chicago. I am in the real estate business in Chicago. I have been in the real estate business off and on for 30 years. My farms are located at 215 Harlem Avenue. In other words, in the southwest part of Cook County and the east side of Will County; they adjoin. Farming is carried on quite extensively in Cook County. I have been engaged in farming about 55 years on the same farms; not all the time. I increased it,—the original farm. As to the extent of my operations, I feed—it varies—anywhere from 1000 head of cattle and 3,000 or 4,000 sheep a year, sometimes less and sometimes more. I buy my livestock on the Chicago market pretty much, and I sell it all there pretty much. I do not raise any on the farm to speak of; we dairy some; we have some calves we raise. I buy most of my feed; raise some of it. I do not spend a great deal of time on the Chicago stockyards market. I have never been in the livestock commission business, or have I had any interest in any livestock commission firm.

[fol. 983] I sometimes finance my own operations and sometimes I do not. I sometimes seek the aid of commission firms in financing my business. Mr. Merrion helps me sometime- to finance my business. He is going to do it on the sheep he is buying today. Mr. Merrion also sells

my sheep for me. I deal with another commission firm on the Chicago market when I have cattle. When I have sheep I do not deal with another firm very often. I would not say that I was familiar with the factors that enter into the cost of the operations of commission firms on the Chicago market. As to the items that make up the expenses of buying or selling livestock on a commission basis on the Chicago market, I know in a general way only. All I know is they have their office and their soliciting and help and yard and take care of your stuff. I do not know what any firm spends for any one of those items. I could not say that I know the salaries that are paid to salesmen on the Chicago market. I could not give the salaries paid to any of the employees of commission firms.

I am going to have Mr. Merrion buy for me at this time, three, four or five thousand. If we can get them in one bunch, we will buy them at one time. Sometimes we buy them in lesser amounts. In answer to a question on direct examination, I stated that I regarded the rates for buying and selling livestock on the Chicago market as being reasonable. I base that opinion—if I get a good service, a matter of $1.00 more or less for selling them, if you get good serv-
[fol. 984] ice, that don't amount to much. I am primarily interested in good service. I want them to get the top of the market for them. Then, I feel that is service. I determine what commission firm I will select to sell my livestock by being acquainted with them and knowing their business abilities. I have been around the yards here for a number of years.

I have never had a commission firm solicit my business particularly; I have had some solicit my business, but that doesn't have much effect on me. I do not ordinarily ship all my sheep to the market at one time. I sort them up and ship the fat ones and keep cutting them out until finally the tail end will be fat and we will ship them all. It depends on the market too. I am acquainted with quite a few of the commission firms on the Chicago market. As to why I do not patronize all of the firms, I patronize the one I think I get good service from; yes, my opinion with respect to the reasonableness of the commission rates is based entirely upon the fact that I am satisfied with the service I get. I do not yet know from whom I will have Mr. Merrion buy the sheep I am going to purchase at this

time. We will buy them from anybody we think we can get them from worth the money. It all depends on where they happen to be and what they are. The ownership does not make a bit of difference to me. I want them empty, if I can get them. My experience in that respect has been varied; it has varied very materially in the past 40 years. Sometimes I get them full and again I get them empty. I [fol. 985] buy sheep from traders. Traders will fill them if they can and you know it. As to whether I get the empty ones from commission firms, that depends; sometimes you buy them out in the feed lots and shrink them and sometimes you buy them off weight, off feed so long, and that varies materially. As to whether I have ever made any study of the conditions of the Chicago market as to whether or not fewer firms could handle the livestock, I suppose they could if they were all consolidated, but I don't know how that would work.

Redirect examination:

What I meant to say in answer to Mr. Dagger's question was that the amount of money that I pay the commission man I deem to be no more than the service is worth to me when I employ him; without regard to what the service costs the man that renders it. That in paying the charge that I pay, which was fixed by arbitration in 1923 in Chicago, that that charge as it is made today, I do not believe to be excessive; that is my viewpoint with respect to cattle as well. I also ship hogs. I also feel that the rate of commission for selling hogs, cattle and sheep are satisfactory and not too high.

Recross-examination:

My opinion is that they might have less firms, but I would not want them to have only one firm. Of course, it all depends on the number of livestock coming to the yards whether they would need more or less, in my opinion. If [fol. 986] I were to pay less commissions than I am now paying and get the same service, I would not object a bit. It is the general tendency of human nature to pay as little as you can; that is the way I am built.

MR. WILLIAM B. SWINEY, a witness, called by the Respondents, testified as follows:

Direct examination:

I live at 4546 Ellis Avenue, Chicago. I am engaged in the livestock commission business. The name of my firm is Swiney Bros. and I am one of the brothers. I am one of the partners. Charles M. and Thomas E. Swiney are the other two. The partnership has been in existence I think from 1907 or 1908. I would be called a steer salesman, but that does not comprise nearly all of the work I do or my duties.

When I first came into the yards as a sight seer in the late Summer or early Fall of 1875, I came over one day with my father, and I went to work in the yards on the 19th day of January 1881 as a messenger boy for the Stockyards Company. I worked a little over a year at that job and quit for awhile, went back with them again in a similar position and worked a year or a little more, and quit again. Then, I was away from here more or less from that time until I think it was February 1889. I came back home and have been here continuously ever since. I was out of the business for eleven months but back into it again. When my father was in the business, I worked [fol. 987] for awhile, but after his death I was with his old firm for practically a year and then we organized the firm of Swiney Bros. & McGahen. That firm was in existence until the first of November 1903, when I went into business with Mr. H. S. Bunker, under the firm name of Bunker and Swiney, and after that my brothers came into the firm, both Charles and Tom. After Mr. Bunker's death in 1906, I continued that business as per contract and later my brothers came into the firm and we continued under the name of Bunker and Swiney for several years and then changed the name of the firm to Swiney Bros. I first started to sell cattle about 1890. I sold odds and ends, calves, milkers, springers and bulls. After I went into business the first of 1892, I sold all kinds of cattle until about 1897 or 1898. From that time on, I have been the steer salesman, selling steers, the good yearlings, mixed yearlings, heifers and steers, and good to prime heifers. I am now engaged in the sale of steers, mixed yearlings

and good to prime heifers, and stockers and feeders. T. E. Swiney sells the butcher stuff, and C. M. Swiney sells the hogs, and he has a helper. We have three cattle salesmen with the firm, two besides myself. B. J. Knoerle sells the bulls, some calves and all the bulls, and helps me some on odds and ends, steers, and occasionally sells a bunch of steers.

Our yardmen work wherever there is work to do. In fact, everybody connected with the concern has to help where they can. The yardmen work with hogs as well as [fol. 988] with cattle. The salesmen help with the work as well as the yardmen. We have what we might term two regular yardmen.

The yards were opened Christmas 1865. Based upon knowledge which I have gained through associates at the stockyards, prior to 1865, there were several yards here in Chicago. I was never at any of them and don't know that I could tell their exact location, but, as I understand it, there was not much of a market here. To begin with in Chicago men used to drive their cattle here from away off great distances, sometimes herd them around the prairies for an indefinite time until they could dispose of them, and later the market developed and the commission men, commission firms were organized to handle the trade and it grew from that. Originally, men who drove their cattle to market sold their own cattle unless they knew somebody who was a little better posted and had been on the ground and was more familiar with the prospective buyers and could help them dispose of their cattle, but, in that case, whoever helped them assumed no responsibility in any way whatever as to salesmanship, collected for the cattle or anything else, but probably was paid some remuneration in some cases for the help he had given a man in disposing of his cattle, in negotiating a trade. I presume that is really the origination of the commission business.

There have been so many changes that I am rather at a loss where to begin. When I first came into the yards myself, there were well established commission firms, but there [fol. 989] was no well established rules of conduct, of business conduct, until the livestock exchanges was organized in 1884. I have some recollection of that, although I was not a charter member. My father was, however. And,

from that time on, there were regular rules of business conduct established and maintained by the Exchange and the business grew. In those days, shipments were larger, fewer men could handle them, handle the shipments. I never sold mixed loads altogether myself, that is, steers and cows and bulls and heifers and everything, but I have been told that back at the beginning, full carloads of mixed cattle were sold together. But, from the time I commenced, and some time previous to that, the different kinds of cattle were sold separately; sometimes the cows and heifers together, I presume, but not all sold together, cattle of every description.

As to the situation with respect to buyers on this market, when I first came into the yards, we had a wider outlet; we had a big export trade at that time, there were export buyers, there were buyers that came here from New York, Philadelphia, Pittsburgh, Lancaster, Boston, Buffalo, and I might say, Cincinnati; they either came here themselves or had agents here. While there is some order business here yet, it is not as extensive nearly as it was in the old days. There is not the competition. The changes that have occurred since 1920 to 1923, after the War, compared to the present time,—at that time the stock was coming more in larger droves, more straight shipments, were easier to handle, not nearly so much sorting, not anywhere [fol. 990] near as many different ownerships, comparatively no co-operative shipments at that time, if I remember right. I am not sure of the date though, and it is much harder to handle the same kind of stock now, if that is what you mean.

The custom has grown to sort cattle more and get them into so many more different grades. There are so many buyers that will buy just one or two particular grades, whereas years ago the buyer might buy and would buy a variety of grades. I guess we meet the best buyers as a class that there are in the country.

The slaughterers of cattle who have buyers on the Chicago market are the oldest, most experienced buyers. Of course, they develop young buyers here but in all the most responsible positions they have their most experienced buyers here while they will sometimes send a man that they developed to take charge of the buying force in another market, but I cannot recall of an instance where they sent

a head buyer to another market. They send a man from the ranks that they have developed here to another market as a head buyer.

Chicago is the largest market in the country, and, as I understand it, nearly every market in the country waits to know what receipts are here and what Chicago is doing before they operate very much.

I arrive at the stockyards Monday mornings about 6:15 [fol. 991] to 6:30 as a rule. Other mornings, from 7:00 to 7:20. For thirty years or more I was here at 5:30 or 5:40 or 6:00 o'clock every morning except Saturday mornings.

With regard to the difference in the mode of arrival of livestock, there has been a vast change in that. Some years back, we had no truck business at all. Now, a considerable portion of the stock that arrives here comes by truck. Some of the railroads just lately have changed their rules and their ratings so that some short loads or light loads of livestock come by rail at a special rate, a rate that is different from the regular carload rate.

At the time these rates were fixed by the arbitrators, in 1923, there were a great many so-called livestock shippers shipping livestock to the Chicago market. They have disappeared in various directions; they were forced out, I would say, largely by the co-operative organizations in the country. With the advent of the truck, it is now possible in the territory served by trucks for livestock in small quantities to be shipped to the Chicago market, and we have a small number of head per owner, and the trucks I think have had a tendency to eliminate in certain territories of the associations that once shipped the livestock by rail.

As to the tendency toward complicating the work done by salesmen and livestock commission men generally in the handling of the business arriving by rail, it would take just [fol. 992] about as long to bring over a full carload of cattle, we will say, as it would to bring over—or just about as long to bring over a part of a load of cattle of two or three cows and three or four calves from where they are unloaded, as it would to bring over a full carload of cattle. Then, the truckers pick up stuff at the farm and take anything from a single calf on up until all their truck will hold;

consequently there is generally a large number of owners for the amount of stuff they haul.

In a general way, I believe that sales effort required in disposing of truck business is greater than it was when that business arrived by rail. The cattle have to be sorted for grade and class, then they have to be sorted for ownership. There is just that additional sorting and that additional selling, and to take a man into a pen to show him some cattle, it will take just about as long to sell him one or two as a pen full. Not quite as long maybe, but it takes a trade. It is harder to sell. The more lots you have, the more sorting, the more bunches, the more work it is, not only the sorting and yarding and in handling, but in selling. And those difficulties by reason of that fact have been increasing since 1923. I do not believe that condition has been brought on by the commission men. The question of the mode of arrival has been beyond the control of the live stock commission men.

Buyers seem to be specializing, not the buyers exactly, the employers of the buyers, in the case of the packers, to [fol. 993] have men to buy each particular grade, whereas years ago certain buyers would buy several different grades. And when you had a buyer, you could go along and show him different grades and work faster and accomplish more than you can now when you have to get a buyer for so many different kinds and classes.

After the animals have been properly prepared for showing and for sale, in the first place, we try to determine as near as possible about what each load would have brought the day before, take into consideration what information I have regarding receipts, conditions, whatever I know, or hear about the beef trade, or anything that might have any bearing on the market, and govern myself accordingly. Then, as buyers come, show them the cattle, price them, try to sell them.

The demands for certain kind of cattle vary continuously on the market. I would not know how to strike an average in asking prices at this market, an average condition confronted by me when I leave for the yards in the morning; I have never found it. I arrive at the asking price by comparison—what I sold the day before or what I have seen my neighbors sell. In the long experience I have had on this market, I think I have learned some things all the time.

I may not be as good in some ways as I was once, but I think in other ways I am probably better. A man never quits learning, if he wants to learn. In most cases, I am able to tell when I arrive at the stockyards and find and look over the animals that I have to sell who will be the [fol. 994] best buyer for those cattle. Swift & Co. has a man that buys shipping cattle. If I will have a certain grade of cattle of desirable weight for him, I figure he is a good prospect; it will suit the Armour buyer for the same class of trade; and the city butchers here use certain grades of light cattle. The Illinois Packing Company, I know about what they can use as a rule, and others of the city butchers, and I know that it is no use to show a man that wants good shipping cattle, common cattle. I know it is no use to show a steer buyer heifers, and so on. I know pretty well what they want, what they will buy. We have generally three types of buyers on this market; those that buy for local packers, order buyers, that buy for distant slaughterers and the trader who will buy any class of livestock. There is the order buyers, you can classify the packers into two classes now, the buyer that buys the shipping cattle and the buyer that buys the house cattle; or for local slaughter; then there is the trader, of course, who will always buy anything he thinks he can use to advantage and make a little money on or mix with other cattle and sort to advantage; there is the stocker buyer who buys stockers and feeders. I have seen stocker men buy half fat cattle, in fact I have seen them buy cattle up toward the top here sometimes, not the stocker men, but men with orders for cattle to go back to the country for short feed. As I say, there is always a variation, always a change. It never stays put in one place. As to how I meet the changes that [fol. 995] are taking place, that is hard to explain. I have got to sense it by instinct in some cases, by various methods, and sometimes a fellow does not see it quick enough either.

I would say largely that the action of the buyers gives me a knowledge of change that causes me to change my methods. If a buyer does not want to buy, shows no interest in what you have, if you force a bid from him it is a low bid, if he continues to act along that line, that does not indicate that he is a very hot buyer, whereas if he is up and coming, wants cattle and is eager to bid you and keeps bidding until he has got you guessing as to whether you

want to sell them or not, it is some indication of activity in the trade, particularly if several act that way.

I would say three principal competitors on the market are the city butchers, the packers and the order buyers and the traders.

It is largely a guess when we start to sell cattle in the morning what the individual demands will be for the class of cattle that we have for sale. If we know that the beef market is fairly good, the receipts have been moderate and that somebody has been out looking for cattle like the day before, that is some indication we might expect a stronger market. If a good many cattle are left over, some on account of very low bids and some on account of no bids, and receipts are fairly liberal, unless there is some sudden unexpected change for the better, we cannot expect a very good market.

[fol. 996] The order buyers and the packers give us lots of advice, but it is all bearish. They never advise us that the market is going to be higher. If they don't want any cattle, they don't hesitate to tell that, but if they do want cattle they don't broadcast it. I have known cases to exist where they said they did not want cattle at 10 o'clock and did actually buy cattle at eleven. And perhaps the same cattle that I had asked them if they wanted at ten.

It is the purpose and the object of the buyers of cattle on this market to buy them as cheaply as it is possible to buy them in competition.

When I see a drove of steers or a carload of steers, in the alley in the morning, I know of no way in which I can determine the number of buyers that I may have to show that load of steers to before I have found a buyer who I believe will pay their market price, but there is a great variation there. The first buyer that comes along might happen to be the best buyer, and it might happen that the last buyer at 1:00 or 1:30 will be the best. We cannot tell with any degree of certainty how many men we may show them to or who might finally buy them. We know in a general way, or know pretty closely what class of buyers they will suit, but there is even a variation there. The buyer may want one class of cattle one day, and by the time they have their figures on that day's buy, they may find that they have got all that class they want, and he won't be such a [fol. 997] hot buyer the next day on that same class of

cattle. There is a constant variation all the way through. Sooner or later I make up my mind that some buyer has offered me what I believe they are worth, and I naturally sell the cattle to that person, and it has happened that I have worked my head off and could not get what I thought they were worth but had to sell them because it was all I could get.

During most of the time during the last year and a half, the market at Chicago for cattle has been very sordid most of the time. Starting last July, I think, the market started up and advanced considerably and all at once it commenced to slump again, and it has been an erratic market. Prices at times have been very unsatisfactory, but compared with other farm commodities, most of the time cattle have sold higher than anything else. That is, hogs or grain. Sheep and lambs I leave out because I do not know anything about them. I was selling cattle on this market in 1923, and I have sold them every year since that time, with the exception of eleven months. I do not see how the service I render my customers in selling livestock at the present time, under present conditions, is any less valuable to the man I serve than it was during 1923. I know there has never been a time in all the time I have been selling cattle that I worked as hard for the country as I have during this panic time that we have been through or just going through. Most of them were blue, or either broke, or half broke, and they needed all the money they could get. I smile because I [fol. 998] happen to think of something that might illustrate what I mean if I can tell it. I was downstate some time ago, visiting some friends and acquaintances, and I said to one fellow, "What the heck is the matter with you fellows, you won't ever write me and I know you want some information I can give you, but you don't ever write me." "Well," this Swedish man said, "I tell you when it rains we are too blue, and when it don't rain we are too busy," and there never has been a time that I worked as hard for the country people as I have for the last two years or so, two or three years, and I don't know why my efforts are not worth as much or more than they ever were. Prices are much lower than they have been at times. The responsibility is just as great and just as much knowledge and close attention and hard work are as necessary now as ever; the work is harder and harder to do every year.

Present trend would indicate that it will be harder and harder as time goes on.

So that if prices have declined since 1929, the efforts I have had to put forth in this disposition of livestock on commission has been proportionately much greater. While so many of these men were old friends, even at that from the feeling that you might have for old customers and old friends, there is a knowledge that they need every penny they can get and you just want to get it for them. We always do work along those lines because we are on that side of the market. I am not always generally well ac-
[fol. 999] quainted with my patrons personally. Sometimes old friends bring new ones, and sometimes I do not know them until they come in with some stock.

I do know personally most of the people who ship here to my firm, and they consult with me on all matters and questions in handling of cattle and I furnish them with what advice I can with respect to their business. And they expect me to do it.

I do not find that there is any complaint among those men as to the amount of money they are spending for my service. The old livestock feeder and shipper has very little to say about that. Our men do not kick about that. There is once in a while a man that is naturally a kicker and he will kick about anything and everything that he is not satisfied with, but it is way in the minority. There is, I would think, one percent.

In the solicitation of business, we try to keep the customers we have by giving them the best service we can, treating them right, and getting new business where we can, anywhere we can, and any way we can, any opportunity we have. By "any way we can", I mean in a good, square, legitimate way. We sometimes have no contact with old shippers beyond keeping them posted on the market, by market letters and sometimes personal letters. Sometimes we may go out and see them. I personally make soliciting trips to the country. I frequently leave Thursday night and come back Saturday night, or if I am motor-
[fol. 1000] ing, I drive back Sunday, spend two days in the country and I sometimes use a car after I arrive at a point in the country by rail.

I determine what trips I will make to the country in various ways. Some man or two or three in a neighbor-

hood may want me to come down and see his cattle and advise with him, or we may learn of a neighborhood where a considerable number of cattle are on feed. We have some acquaintances and some reasons to believe that a trip to that part of the country might be profitable, and sometimes a trip is made just to see a few especially old friends more than anything else, and sometimes in doing so we make new acquaintances and there is no rule that governs that. Well, yes, we try to avoid creating expense making trips that I think will not be profitable to the company.

I believe we could make more trips to good advantage if we could just be successful enough in picking the places to go. Sometimes a man is disappointed in results, the result of any trip. We never have apportioned any particular sum of money to business-getting and maintaining. There is no way to tell what our gross commissions will be for the ensuing twelve months of each year. We do not know what the gross commissions will be, and if, we will say, for instance, we would allow a certain amount of money regardless of the percentage, any certain amount of money, so we would spend that amount of money for traveling; [fol. 1001] we might run way under or over that; I do not know how anybody would determine what they ought to spend.

If the department were to allow us ten percent for solicitation, there is absolutely no way that I believe that I could decide how much money I should spend and keep within the ten percent, when I do not know and cannot say what our gross commissions will be.

A man or a firm that starts with the idea of spending so much money, is going to spend some of it foolishly, and I would not know how to determine what percentage ought to be spent for traveling. I have no idea of going out to the country and have no trip in mind right now at all, but somebody may turn out, and I may want to go if I am not detained here, tomorrow night or tonight, or any time at all; something might turn up where two or three men from the same neighborhood might write in or phone in or something of the kind, and we might determine that it would be very good business for me to go down there. On the other hand, the cattle might come from this neighborhood or that neighborhood, and there would be no particular occasion for going to any one of those neighborhoods to do any

soliciting, because cattle are coming anyway; we're getting all we expected to get, and I do not know any way to determine what percentage or what amount of money should be spent for advertising. Some people naturally travel and spend more than they should. It has seemed so al- [fol. 1002] ways, and others might spend more to pretty good advantage. That is largely a matter of opinion.

And it may be that in the case where I believe that people spend more than they should. If I were apprised of all the facts and placed in their position, I might believe that the expenditure after all was warranted because I cannot know the circumstances which cause the other man to do the things which he does in that connection.

We do not loan so much money in the commission business to growers of cattle. Loaning money helps some in drawing business to a firm, but the most of our business is done by reason of the services we render to our customers, and the reputation that my brothers and I have established over the long period of years we have been engaged in the business. Our business would go down if we maintained our service at the same high standard of excellency and our reputation remained the same for rendering good service, and we formed no contacts by solicitation, market letters and similar activities. As to whether I think it would be fair for anyone to say that the amount of money that we expend is wasteful or exorbitant, we have spent more money in getting and maintaining business than it costs some other firm to get and maintain a similar volume of business; unless he knew as much or more about our business than we do, I do not see how he could arrive at any conclusion about the matter. As to whether I think the money expended by us during the year 1932 was only a sum [fol. 1003] of money which we deemed important and necessary to spend for that purpose, I think it was advisable; that is why we spent it. There was no way to tell in advance what the results of those expenditures would be in the matter of business-getting. I may say, no, there were no wasteful items of expense in that connection in my judgment during the year 1932; there was not intended to be, and while some trips did not result as profitably as we would like, I don't think we wasted any money.

I do not think we have a larger personnel or that Swiney Bros. have a larger personnel than is necessary to prop-

erly conduct the business of Swiney Bros. on the Chicago market; if I did, we would cut it down.

As to whether I believe that in 1932 we spent more money than should have been spent in the exercise of sound judgment in the operation of the business of Swiney Bros., possibly, but if we did, there was no way of stating it at the time. I cannot recall any such expenditures at the present time which I believe, in the exercise of good judgment, would not have been spent by a person of good sound business judgment. I believe that the firm of Swiney Bros. was operated as economically as the circumstances permitted during the year 1932.

As to the rates charged, I think, in many cases we earned far more than we got, and in no case do I think our charges are excessive.

[fol. 1004] Cross-examination:

At times when we go out soliciting, we go at the request of some potential shipper, not always. At other times we go where we believe there is some business. And on those trips I tell them very often what I think the cattle will bring at the present time. I sometimes advise them with reference as to when to ship, but I don't like to do that.

As to the form in which we receive requests to come out and appraise livestock, a dozen men may say something different. They might say, "I wish you would come down and see my cattle and tell me what you think of them, or if you can come down in our neighborhood, come and see my cattle and I will take you around to see some other cattle".

It is not always understood that where I go to look at cattle that that shipper will ship his cattle to us. I would sometimes say that I would come if he would ship the cattle to us, but not very often. When I go down to look at livestock sometimes I am told that some other commission man has been there. If I knew at the time a request was made to come and look at a farmer's livestock, that some other commission man had already been there, in that case he would ask me to come and see his cattle, I would take it he would rather have my opinion and his intention was to ship his cattle to our firm. We make frequent requests of people to ship to us; and we make such a request when we know that the shipper has in the past been shipping to another

[fol. 1005] commission man. We do attempt to solicit business away from other commission men, and I think others attempt to take our business. I am quite sure they do. I have told you in substance that shipments to the Chicago yards have decreased in volume. If anyone were to try and maintain the same volume of business we had when receipts were much heavier, they would surely have to solicit more and work more for business, but we do not hope to do that.

Considering the fact that the volume of business has declined at the Chicago market, and whether I think I should spend more money to solicit business or less money to solicit business, I don't believe that there is any appreciable difference in the amount of our solicitation expenses now than there was years ago, so I don't believe, without having the figures at hand, we are spending any more money, or if any, very little more than we did when the volume was heavier. I cannot tell you specifically just what receipts, that is, what shipments to our firm we have gained during the past year due to our solicitation, or to our advertising. Solicitation is limited by the rules of the Exchange. The rule limiting solicitation was ratified by a vote of the Exchange—I mean by the various members. I could not tell you when that was. I could not tell you if I was present when it happened.

Assuming that the expenses for solicitation of each commission firm was limited in some way, that is, cut in one-half for each individual firm, I don't know of any way to tell whether that resistance would affect our business. Natu- [fol. 1006] rally some firms are larger than others; they have different facilities than others; naturally their expenses along certain lines, along any lines, would be heavier than others, and why not ask if some certain railroads should not be limited to a certain number of miles the same as some little railroad or anything of that kind. I cannot get the idea. Taking the proposition: Just how I would determine the amount which each firm from the yards should be allowed to expend for solicitation. I would not attempt to arrive at it; let every commission firm decide that for themselves.

I believe the commissions should be uniform. I believe every firm should regulate their own expenses. Back years ago, there was no Exchange; then, after we had an Ex-

change, each firm was allowed to have three traveling solicitors. That proved to be expensive and a burden. That was done away with, but members of the firm and salesmen were permitted to make trips to the country soliciting, and it is necessary to go to the country sometimes—necessary for members of the firm. It is advisable. They don't do that in order to see how much expense they can run up. As far as the expense is concerned, any man that knows 100 per cent what is wasteful expenditure and what is not, he is a cracker-jack; I have never yet seen such a man. The Exchange did limit soliciting within itself. The effect was to cut off expenses. And that same limitation was imposed upon every firm. It depends on the circumstances when [fol. 1007] truckers bring in shipments of livestock to our firm, whether we solicit the business from those truckers. We don't run around to every trucker soliciting his business. Sometimes when we meet a trucker and talk to him about livestock and about sales, we ask him to bring other consignments to our firm. I do not solicit seconds, or speculator livestock to sell.

I do not find the cattle are as easy to sell if they come from traders as if they come from first hands. I like to sell traders' livestock when I can. I have refused to take some, and I have taken some, but we sell very few of them.

I know that the services we render are not less valuable to the shipper today than in 1923. I evaluate our personal services to the shipper, giving him just as good or better service than we did then, and it is possible for us to give just a little better service at times because your volume is less and you work just as hard as you ever did, and maybe harder. When you are working just as hard as you can, your services must be just as valuable.

We confer upon the shipper the ability to get the highest figures; that is what we try to get. It is true that today the price of livestock is less than it was in 1928 or 1923. The farmer gets less today than he did in 1928 or in 1923.

[fol. 1008] In time and service and effort, our services are just as valuable now as they ever were. The feeder, the livestock man, the shipper, his business may not be as profitable as it was then, and it probably is not, but sometimes our business is more profitable than at other times, and I imagine that anybody else's business is more profitable at times than it is at other times; but in our case, that is our par-

ticular business and if we don't get along, why, we cannot blame the farmer or somebody else, we have got to hit the ball and get along. In proportion to the amount of business we handle, it costs more in time and labor.

I am a steer salesman. I personally sell heifers, in addition to steers. My brother Tom and Ben Knoerle sell calves. My brother sells some heifers and cows, canners, calves. Ben Knoerle sells some calves and bulls and some odd steers and occasionally bunches of steers. It is a fact that direct shipments have caused a decrease in the volume of business to the Chicago yards. It is one of the causes for the decreased volume. It is true that the co-operatives have built up a large business on the Chicago yards and induced a large number of livestock to come to the co-operatives. And to that extent it is another cause for the decrease in the business done by the other commission men.

I don't know the number of head of cattle we had in today. I don't know whether we had any truck stuff or not. We had some cars, though. I could not tell you how many. [fol. 1009] I probably sold a load and a half, today; it might have been closer to two loads, I don't remember. I sold some of them about 8:30, some of them about 9:30, some of them about I should say ten or 10:30. I don't know into how many drafts they were weighed. I could approximate that there were two out of one pen, one out of another, two out of another—eight or nine drafts. It is not ordinarily any more difficult to sell a straight load of fat steers today than it was five years ago.

I want to qualify that last answer a little bit. We have hardly as much competition—as many buyers as we had some few years back. Five years ago, there was probably a few more than there are now. It might have been a little easier to sell cattle five years ago than now.

We carried over cattle in 1928. We do not carry over many throughout the course of a month; I don't think we carry over any more than we did in 1928. As to whether in my opinion our firm renders as good and efficient service as any firm on these yards, well, that is a hard one to answer. We may or we may not. It is a matter of opinion among different men. Yes, I have an opinion. I think we handle our stock very well indeed. As to whether we handle it as well as any other firm on the yards, that I don't know. I don't know exactly how well every firm here han-

dles their business. Oh, I don't know if I could sell as many livestock as any salesmen on the yards if I had them to sell.

[fol. 1010] In my judgment sometimes maybe I could sell more livestock, more cattle, if I had them to sell, and sometimes I couldn't. I could have sold more today if I had had them to sell. I don't know how many more. The Chicago yards could absorb more cattle than actually came here today. As to whether in my opinion the Chicago yards could have absorbed more cattle in 1932 than actually was received, that I do not know. Well, if bargaining and bickering, as you term it, if you mean to ask if that is all there is to selling livestock, that is not all. If a buyer tells me flatly that "I am not in the market to buy a single hoof today," I do not attempt to argue with him and get him in the buying mood; I just think if he changes his mind or his orders are changed, he will be around. I do not think we have a larger personnel than is necessary for our business. I regard our salesmen as being the equal of any salesmen on the yards here.

Q. If it be true that other salesmen have actually sold three times as many as your average performance, would you not feel, then, that your personnel is greater than need be?

Mr. O'Bryan: I object to that type of question, if the Examiner please, on the ground that the assumption does not give any facts as to the circumstances under which the assumption is made, namely, the selling conditions or the type of cattle sold, or the buying conditions or the market conditions, and that the question, in itself, is too general and the witness cannot do anything but make a mere guess or he cannot answer the question. There is nothing there on which he can base a proper answer. It is an absolutely improper question.

Mr. Miles: Now, you have been told, under the guise of an objection, that you must not answer the question, it is not binding upon you at all——

[fol. 1011] Mr. O'Bryan: I object to that statement of counsel. I have not told the witness that he must not answer the question. I made a legal objection to the question which is improperly phrased.

The Examiner: Can you answer the question?

The Witness: Just what is the question?

(Whereupon the question was read.)

The Examiner: Is that question clear to you so you can answer it, or do you want a period of time that Mr. Miles has in mind specifically?

The Witness: No, sir, I will answer the question.

The Examiner: The question is clear to you so you can intelligently answer it? In view of what the witness says, the objection is overruled.

The Witness: I don't think we have too much help. If I did, we would eliminate some of the help. I will go still further with you.

Mr. Miles (continuing): You believe, do you not, that your salesmen could sell as many head of livestock, if you had them to sell, as any other salesman on the yards?

Mr. O'Bryan: Same objection to that type of question.

The Witness: I didn't say I believed that.

Mr. Miles (continuing): I am asking you now if you do.

A. I thought you were telling me. I beg your pardon.

Q. Granted. I am asking the question.

A. I don't know how many anybody else can sell or I don't know how many I can sell.

There are a good many different elements in this salesmanship proposition, when you ask a man if his salesmen [fol. 1012] are as good as anybody else on the yards, or if he is as good as anybody else on the yards, there is none of us but what are stronger in some ways than most all of the others, and I don't know of any man that is altogether, in every way, superior to everybody else. Our commission rates are not high enough. The elements I consider are responsibility, integrity and ability.

Q. All right. Now you have some expenses. In your opinion, what then should be a fair rate per car for selling, and I am not now including any expenses, including no factor whatsoever except the one item of selling. What do you think is a fair rate for salesmanship?

A. Salesmanship only?

Q. Yes, sir, how much per car.

A. There never was any such thing as a man that just sold only. There are so many other duties and so many

other lines of work that work in with that salesmanship, and if he isn't any good for anything else, then he is no good as a salesman.

I never did believe that considering the amount of effort that we exerted in receiving, handling, sorting, selling, collecting and remitting and all, keeping them posted, doing any number of other things that might come up, that we got enough commission. In the early days, the old-time commission man started on too low a rate and the commission business has always been on too low a rate from the beginning up to the present day. There are times when prices are high; that aside from all the responsibility, all the actual hard physical labor and mental strain that we all had to go through—guarantee ownership to the pur-
[fol. 1013] chaser, make remittance to the country, regardless of when or how we collected—I will say though that collections were good, there has been very little loss—our gross commissions were less than one-half of one percent. There is no other organization of men in the United States or in the world that I have ever heard of that has ever worked as cheap, for as little.

I have been personally acquainted with most of the successful commission men on this market for the past forty years. I don't know for sure that I can recall an instance in my entire experience where any person has been able to retire from the commission business, after having devoted the best years of his life to it, where he, during the period of his activity on this market, has been able to acquire a competence from the commissions he has collected in the business at the Union Stock Yards. I am not able to recall one such person for sure. Some men have acquired a competence but in nearly every case it was from some outside investment or other line of business, some side line, like land, ranch land or farm land, or something of that kind.

Q. Now, you have also told us that in your opinion the commission rate should be high enough to give a living to a commission man, I believe that is the way you phrased it?

A. I think I said and a profit also; he is entitled—if he has got energy and brains enough to run a commission business, he is entitled to make a little money.

[fol. 1014] Q. Yes, that is correct. By that statement,

did you mean that the rate should be high enough to give a living to every commission man on the yards and a profit?

A. I was not talking about every commission man; I had my own firm in mind or any firm that is a good going firm.

Cross-examination:

I will say if a man could only get 50 carloads a year, he has got no business in the commission business. I think the commission man who only receives 50 cars would be out of business on any reasonable rate at all. I would consider a reasonable rate 50 per cent more than we are getting.

God Almighty did not make men equal. The Constitution of this country says that they are free and equal, but God Almighty did not make them equal by any means. No legislation will make them equal; if one man has ability and courage and stamina and integrity enough to work and establish a good business and go ahead and make a profit out of it, according to all the laws and the Constitution of this country, as I understand it, he is entitled to do it. And your line of questioning, as I understand it, would put the best man that ever was here about on a par with the poorest man that ever was here, and I don't think there is anything fair about that. I have testified that I think the rate should be high enough to give me a living plus a profit.

[fol. 1015] Mr. T. E. Swiney, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 9711 Winchester Avenue, am engaged in the livestock commission business, and am one of the partners in Swiney Bros. at the Union Stock Yards. I have been a partner of that organization since this organization in its present form. I think it would be perhaps 1920 or 1922, when the firm was turned into a partnership again. I have been engaged in the commission business about 40 years. I started in as a yardman. I worked at first as a yardman for about 18 months, then I was an office man for about 18 months or two years, and then I combined the two,

yardman and office man for several years. Then I gave up the inside work and went outside most of the time with a little supervision over the clerical force inside and that has continued since. I now sell butcher cattle. I have sold butcher cattle from the time I started to sell cattle, with the exception of a few periods when it was necessary to step into some other branch for a short time, but that is the title, butcher stuff. All of my experience has been confined to the Chicago market. Disposing of butcher cattle, Swiney Bros. have the yard man bring them to the alley, proceed to sort them up and grade them, feed, water, get them ready in the shape that in our judgment they will appeal most to the buyer and then proceed to call in buyers to see if they cannot sell them at a satisfactory price.

[fol. 1016] I generally arrive at the office from seven to seven thirty. The day's program starts with getting on your yard clothes, and if the mail man has arrived by that time, take a look through the mail, see if there are any instructions regarding shipments. If not, I proceed out into the yards and start on whatever is over at the alleys at that time.

It is safe to say that no two markets at Chicago are the same in all particulars. Our consignments arrive in different parcels requiring different treatment by us as salesmen. Our demand is constantly changing from hour to hour and from day to day. We handle and sell a particular consignment on one market and may do it quickly and on another market may handle it in an entirely different way from start to finish. It may be said that we cannot find an average load or an average condition on the Chicago market. It is true that some portions of butcher loads will sell rapidly on one market and other parts of the load you have very great difficulty in selling and getting the price. It is very often true, that on another market, with a similar load, the conditions would be reversed. We attempt at all times to get the most money for the owners of the various classes that comprise loads of butcher cattle consigned to us, and show those cattle to the number of buyers which we deem it necessary in order to accomplish that purpose. It is often the case that with cows, we may be able to dispose of them quickly to one of the first persons who appears to buy, and again we may be required

[fol. 1017] on the same day to work out every available buyer that we can get to look at that type of cattle and still not be satisfied with our efforts.

In my judgment it has become increasingly more difficult to dispose of cattle satisfactorily since 1923. The buyers on this market have become more and more exacting to the particular classes which they want to buy. It requires a great deal more labor. Our business is drawn principally from the corn belt section, and the greater portion of it comes from Illinois and Iowa.

We make trips on our own accord and make trips also where we are specifically requested by our patrons to come and look at cattle and to advise regarding the marketing of those cattle. There is no record kept of what occasion brought about the trip. As to who decides as to whether a person with our firm who is eligible to solicit shall make a trip for that purpose, that is generally a matter of when it is convenient or most convenient for some particular person to go, and the custom with us has rather divided the territory that the different ones solicit in; and these trips are made ordinarily at the close of the week when we do not have butcher cattle to sell. I do my traveling on such trips sometimes by rail and sometimes by car. I do not know that our firm sold 673 cars of cattle during the year 1932. If the record shows that our firm sold that number and the average cars per salesman was 224, and that the number of salesmen employed was three, I do not [fol. 1018] believe that the business could have been done properly and our constituents been properly served by fewer salesmen than were engaged during 1932. I think the volume of Swiney Bros. during the year 1932 in butcher cattle was less compared with previous years within the last ten years.

I have made a constant effort to keep the volume of Swiney Bros. up to the average of previous years, but notwithstanding have not accomplished that purpose.

I do not believe that we expended any greater sum of money than should have been expended in the exercise of sound business judgment in an attempt to cause business to be consigned to Swiney Bros. for sale. I cannot recall any trip which I believe could have been avoided by the exercise of good judgment and the money spent on such trips thereby saved. I do not devote a great portion of

my time in an attempt to persuade owners of livestock to market livestock through our concern which would normally reach another competitor doing business on this market.

The business which we did attract to our firm through our solicitation would have gone to some other point than Chicago for sale. I find that that type of solicitation is more productive of business than an attempt on our part to take the business away from the other competitor. All of these trips have not been in that one nature; they have not been, but that has been the occasion frequently. It is [fol. 1019] the practice in this business for many raisers of livestock to change firms to whom they ship. We may receive a car from a man, please him in every respect, but for one reason or another, he may go to some other person with his next shipment, and be back with us with his next. And that does not indicate to me that we have not properly served him. I have not been confronted in my contacts with shippers to this market with any complaints with reference to the reasonableness of the charges for the service which we render—not on a basis of the service not being worth the charge. I have been spoken to with regard to the fact that stock was selling so low as it would perhaps be some aid to them if the charges were a little less, not the work itself did not warrant the charge.

The rates were fixed by the arbitrators following some rather severe declines in prices. I believe the rates for cattle were reduced at that time. Notwithstanding that cattle prices doubled on the Chicago market after that time, my associates and I made no requests to increase the rates by reason of that fact.

I believe that the rate, if fair in 1923, is not unreasonably high today, taking into consideration all the circumstances.

I do not believe that Swiney Bros. could render as excellent service under a reduced rate of commission at the Chicago yards as they can render at the present rate. In my judgment, the effect of a reduction in rates to Swiney [fol. 1020] Bros. would cripple the service. It would have the same effect on me financially.

I do not know any way whereby I could bring about a condition in the year 1934 which would cause me to have for sale twice the number of cattle which I did sell, if I could get them to sell; I would like to discover some way

of doing that. We consistently attempt, as a proprietor of Swiney Bros., to make reasonable increases in the amount of business that we are able to do. If there are too many men in business, it is because shippers consign livestock to those people for sale. The shipper himself can make the selection by reducing the number of houses to whom he may ship. If there be any criticism of the number of men who are engaged, it is because for each man engaged there is someone who ships him livestock because he believes that that man can best serve him in the sale of his livestock.

Q. At page 9 of the report of the arbitrators, it is said: "In reaching a conclusion as to what, in their judgment, will be a fair charge for the producer to pay and a fair compensation to the market agencies for the services rendered, the arbitrators have in mind that it is not within their province to pass on the question of whether a firm has a right to act as a market agency, but they have approached it from the standpoint that the compensation should be reasonably remunerative to those efficiently functioning as market agencies. It would not be to the advantage of the livestock producer to bring about arbitrarily such conditions as to cause necessary talent to seek a field for its services other than with a livestock market agency. It appears that the producer and the shipper should be the best judges as to the quality of service furnished them by the several market agencies and as to whether the service is satisfactory. It is entirely within the power of the [fol. 1021] patrons of the market to withhold patronage from those market agencies that fail to give satisfactory service. Herein lies an effective means, available to the shipper, of improving market services." Do you concur in that conclusion?

A. Yes, sir.

I believe that the same opportunity as indicated by the arbitrators is afforded the shipper of livestock to this market today. I do not believe that the general expenses of our concern, as well as the salaries paid by us, have been more than should have been paid in the exercise of sound business judgment in 1932.

I do not believe that we expended any money in an at-

tempt to get business which was not warranted under the circumstances at the time it was spent.

I do not believe in looking back over the business that we could reasonably have been expected, through the exercise of proper forethought, to have spent less money in the conduct of our business in serving our customers than was spent.

I do not recall any individual item or any item of expense that was not warranted by the circumstances.

Cross-examination:

I just heard read to me a section from the arbitration award, and I agreed with the statement that was made there. I cannot see where it would be any advantage to the [fol. 1022] producer to have the business coming to the Chicago market concentrated in the hands of fewer commission firms than are now doing that business. Competition is the reason. Competition means better service. Better service means more money to the man in the country. I cannot think of anyone who would gain anything by it. It might possibly be to the advantage of the commission firms at the present time, but we have no assurance that conditions will remain as they are for any great length of time. If for some reason the packers would cease to buy so much stock in the country direct and let the livestock find its natural market in natural places as it has in years past, there would not be any advantage in making fewer commission houses here. There might be necessity for more or larger commission houses. I don't think that fewer firms could handle it at the present time with any decidedly less men and give the same grade of service. I could not say as to whether the rates charged would be a factor in determining how many there would be on the market. If our commissions were doubled at the present time, I could not say that there would be a tendency for more firms to launch in business, even under present conditions. The tendency has been to draw away from the business rather than to come into it in late years. The reason for that, I presume is, that that has been a great deal due to the fact that there has been considerable interference with the normal flow of livestock as to who shall sell it and where it shall be sold and how it shall be sold.

[fol. 1023] I do not know that there has been any condi-

tion prevailing on the Chicago market which has required people to withdraw from the business; I don't know of any that have withdrawn voluntarily, but I have noticed that the younger generation has not stepped in to fill the gap where the old folks have dropped out through death or one thing or another of that kind. That is because the business is less remunerative, more restrictions and more obstacles placed in the way of the natural flow of livestock to the market. There is less of it being sold by commission men.

Inducements that would lead a person to go into the commission business, to begin with, there is a natural attraction of matching wits and ability with another man. There is a liking of some people for livestock, the same as there is a liking of some people for horses, boats and things of that kind, and you find that most of the people who are engaged in the livestock business, their predecessors were either in the country or on the market, and even those that date back to the third generation, their predecessors were in the livestock business in most cases. In a great many cases it is my observation that the younger generation is not following in line so much. When I speak of the restrictions being placed on the business, I am not speaking with regard to restrictions as particularly as to making it unprofitable. It is the effort to divert the business away from the central markets that tend to make it unprofitable. That tends to make it unprofitable, less desirable for a young man to enter into.

[fol. 1024] As to whether I think that fewer commission firms could serve the shippers coming to this market, there might be fewer firms, numerically, but not less men engaged in the business numerically to do the job as well as it is being done now. I do not think that every man in the market is operating to full capacity. At times, but he is essential. Because there is some particular thing that at some time during the day or week that he does better than somebody else in his outfit and thereby realizes more for the owner in the country by his being there. I don't mean that these men all sell stock. They are employed here in the yards; many of them have various other jobs that are essential as well as the selling of the livestock. As a general rule, I observe that where firms cease to engage in business on the market, that the business still continues to come to the market is naturally absorbed in the remaining firms doing busi-

ness. It is not for me to pass an opinion as to whether each firm engaged in business serves its customers as well as any other firm serves its customers. That is up to the man who patronizes them; that is why he patronizes them because he believes he obtains as good or possibly better service, in his opinion, from the firm that he patronizes than he might from any other firm.

I have known of cases where men employed have branched out and started their own commission firms. They make some friends and they become followers of them, and at the same time, they leave some of their own friends behind them.

[fol. 1025] If approximately 16 firms do about 50 percent of the business on the Chicago market at the present time, or did do so in 1932, I believe there is a reason why twice that number of firms could not do all the business. The nature of the business would not permit. One firm might handle a considerably greater number of cars, by the nature of the livestock received in those cars, they might be able to handle it very well. The same number of cars of a different nature they could not handle so well.

I don't know of any two concerns on the yards where the business does run the same. As to whatever number of firms are on the market, they should be maintained in their present status, regardless of the volume of business handled; to the degree with which they are able to maintain themselves, yes. I would not be in favor of having more firms come on the market unless the Lord would bring more livestock here. I do think there is such a thing as having a profitable volume of business from the standpoint of a commission firm. I would determine what is a profitable volume, when at the end of the year you have made some money, and what determines whether you will have some money made or not is the amount of business you have done when you get through that year. You cannot tell in advance. I don't think any man in the world knows at the beginning of the year whether he is going to have a profitable business or not in any line of business. We have high hopes when we start out the beginning of the year that we [fol. 1026] will have business at all. We know we have some friends in the country and we know that some of them are still fortunate enough to be able to do business and we hope they will continue to patronize us. I don't believe

our business is fairly constant one year with another, since the advent of direct buying. That has decreased our business. I believe it has the same general effect on the other commission firms on the Chicago market.

Mr. Charles M. Swiney, a witness called by the Respondents, testified as follows:

Direct examination:

I am one of the partners of Swiney Bros. I handle the hog end of the business. I have been selling hogs at the Union Stock Yards for 41 or 42 years. I commenced to sell hogs for Swiney, Burton & Co. The firm has undergone several changes since that time. At the time I started to sell hogs 41 or 42 years ago, I had been a yardman and assistant to my father selling hogs previous to that time. I have an assistant salesman and an alley man and the yardmen, when they have finished yarding their stuff, come to the alley and assist in the weighing. Our yardmen will yard any species that happens to be unloaded at that particular time. The men that are working on cattle will come and help on hogs. And if we are not busy, we will send them to the cattle alley. We have three yardmen. I ar- [fol. 1027] rive at the yards between 7:30 and eight o'clock. When the hogs are brought to our sales alley by the yardmen they are turned over to alley man and my assistant salesman, who place them in pens and grade them; sort them and grade them.

The hogs are sorted for quality by the assistant salesman or the alley man, generally the assistant salesman.

I am familiar with the grade of hogs that the various buyers purchase and show those buyers those hogs, price them to them, try to arrive at a bargain. At the time I go out into the yards, I familiarize myself with receipts at other points, take into consideration the close of the previous day's market and try to learn as much as I can what kind of orders the buyers have for the day. I am successful at times in learning what the orders are. I might get the information by talking to the buyers, or from their actions; there very often at the opening of the market will be an indication of it. If the proportion of the direct hogs is

large enough that it is leaving just about enough hogs to furnish the smaller packers, and the eastern shippers, or a little less, naturally that would strengthen me; or if in my estimation the proportion of hogs direct to the old line commission houses was larger than I thought the small packers and shippers would use, naturally that would weaken me.

Direct buying has decreased our hog business from thirty to forty percent. I have attempted to get that busi- [fol. 1028] ness back through personal contact and correspondence. The number of hogs arriving at the Chicago market in trucks is increasing.

I think we have to do more sorting and grade our hogs much closer now than we did in 1923. The Chicago market is the yardstick, the basic market for all markets and more or less establishes the prices for the entire country.

I find the most effective means of solicitation today in getting hogs shipped to our firm are personal contact and good service. We also do some advertising. We send out market letters and circulars and send some market papers. The office manager or anyone of the three brothers of the firm will determine the hog customers of our firm that will receive the market paper. I did not make many trips to the country last year, and Mr. Pence, my assistant salesman, does not make a great many. I would say he goes possibly once in three months.

Five months of 1932 the government work sheet shows that there was a loss and there were four months indicating a gain or a profit; it will depend upon the volume of the business handled.

Our business is organized to handle the amount of business which we feel it will be necessary to handle in the immediate future, and it may run over or less than what we contemplate, but our expenses remain stationary, so that when the volume goes up or down, and the commissions are [fol. 1029] more or less from one month to another, we might have a gain or we might have a loss. We reduced salaries during the year 1932. I don't remember the month.

The duties of the hog scale turn man, an item of expense being $318, is to keep track of the turn at the scales for the various firms who weigh there and to assist those firms when they are on turn. I think the item of $67.65 shown as extra labor for hogs, would be extra men put on days

when our receipts would be a little large and we needed a little extra help.

I think that the service rendered by the hog scale turn man is justifiable and beneficial to the man that pays the rate. The partners did not change their salary basis among themselves between the year 1931 and 1932. There was a reduction in my salary in 1932 from what it was in 1931. I don't remember the percentage. The owners' salaries were reduced $5,000 and the employees' approximately $3,000, notwithstanding the firm did not earn as much money during the year 1932 as it did during the year 1931.

In the handling of our hog business during the year, we did not spend any more money than was necessary, in my judgment, to spend doing it. Less money was spent in travel and solicitation in the year 1932 by our firm than in the year 1931, which includes various types of advertising. That is an illustration of the attempt on our part to reduce our expenses. Same with reference to a $100 reduction in stationery printing and supplies. Our miscellaneous [fol. 1030] expense for 1931 was $247. The same item for 1932 was $100.

Cross-examination:

My duties with our firm are: I manage the hog department; sell hogs; take care of the correspondence pertaining to that department; and superintend the yarding, sorting, grading of the hogs in that department. I am generally consulted with reference to any business policies to be followed, being an equal partner and having an equal say with my partners. I don't think any one of the partners have what we might call sole jurisdiction over the office.

Mr. Pence sorts and grades hogs and assists me in selling hogs. He does not sell the same lot of hogs that I would show; he sells some particular kind. He would assist me in selling mine. It is hard to say how often he does that. I wouldn't say very seldom and I could not approximate the time. There are two of us selling hogs, myself and Mr. Pence. Mr. Pence sells what we term odd hogs. I sell approximately 5/8 of our hog receipts, and Mr. Pence sells the remaining 3/8; that will vary seasonally. At times of the year, from July on until November, we receive a larger proportion of those throw-outs and odd hogs among our

receipts than we do the balance of the year. I cannot say the exact number which was the largest number of hogs which our firm has received any day this week, I would say between 800 and 900 head. That number was [fol. 1031 received yesterday. I would say that approximately the same proportion that I gave you indicated the numbers sold by me and by Mr. Pence. I do not know the largest number that we have received in a single day during the present month of July. I do not know whether it would run over the eight to nine hundred head received yesterday. I do very little soliciting in the country, not over ten days or two weeks per year. When I go to the country I solicit all kinds of livestock. I appraise hogs, not cattle, and very often I am asked as to my opinion what the future prospects as to prices might be and I have to give an estimate on that in regard to hogs only. I never discuss cattle prices with them. I don't know about the people, as to whether other commission firms are soliciting the same people that I solicit, but I would solicit their business nevertheless. I believe that other commission men solicit business that ordinarily go to us. I am familiar in a general way with the office routine, general expenditures of our company, the general management of our company. In my opinion the expenses we pay for yarding are reasonable expenses. For yarding hogs. I could not state the same with reference to cattle; I don't manage the cattle department, and I would not care to state. With reference to our office work, so far as it pertains to hogs, I believe that our expenses are reasonable. Wherever possible we have made an attempt to reduce our expenses in the year 1933, I mean our firm has. I cannot cite any particular instance offhand. I regard as reasonable our soliciting expenses, and by those expenses I refer to our entire firm and [fol. 1032] not to my own personal activities. As to whether our firm has sustained any actual loss with reference to the commission business in money, I would have to qualify my answer. We charge a salary, a very fair salary to ourselves, and at times our business has shown a loss where those salaries are charged. It shows a loss if those salaries are actually paid to us. And if we were to eliminate owners' salaries, or partners' salaries there would have been no loss. I would think that the current rate of interest would be what we should be allowed for such investment as Ex-

change membership, office furniture and the like. That is about six per cent. The information that I have accumulated before I go out to sell hogs in the morning helps me in forming my idea and impression of what the market is going to be as to prices.

We solicit from anybody from whom we think we can get business. In my opinion the laboring class are the larger portion of the consumers of pork. I know as a matter of fact that there has been a depression for several years past, and I know as a fact that there have been millions of people out of employment along the industrial lines, and in my opinion, that economic depression, with the resultant unemployment in the industrial world, tended to reduce the consumption of pork and thus tended to reduce the prices.

There is a direct relationship very closely connected between the price of corn and the price of pork or hogs. It is true that the price of corn for several years last past has [fol. 1033] been very low, as compared with previous years. It is true that because of the low price of corn as compared with the previous years, it is reasonable to suppose that the price of hogs would be low at the present time, but not as low as they have been.

Q. In your experience, do you believe that you could sell ten carloads of hogs a day, taking them just as they come to you, if you had them to sell?

A. What day?

Mr. Boyd: Now, Mr. Examiner, I object to that question for the reason that the work papers in this case show that in the case of this firm for the year 1932——

Mr. Miles: Did Mr. Boyd get the question? It is not that the witness has sold——

Mr. Boyd: Wait a minute. I want to make an objection and I have lost my papers. The record shows that this witness——

Mr. Miles: I object, Mr. Examiner, to any further statement as to what the record shows.

The Examiner: Objection overruled.

Mr. Boyd (continuing): I think the witness is entitled to know what it shows and the Examiner should rule on it after finding it out. In the case of straight carloads, plural ownerships, there were three consignments that had 94

head; there were six consignments that had 95 head; there was one consignment which had 110 head; there were five consignments which had 118 head; there were five consignments which had 128 head; there were two consignments which had 141 head; there was one consignment which had 171 head; there was one consignment which had 400 head. That in the case of the 401 head there were 26 drafts and in the case of one consignment containing 244 head there were 26 drafts, and that in the case of straight carloads there was one consignment that had 94 head; that there were four consignments that had 114 head; that there were eight consignments that had 138 head; with varying numbers of drafts; that there was one consignment that had 289 head; and that in the case of trucks there were 63 con- [fol. 1034] signments that had one head; there were 52 consignments that had two head; there were 33 consignments that had 3 head; there were 18 consignments that had 12 head; there were 12 consignments that — 22 head; there were 5 consignments that had 32 head; there were 6 consignments that had 45 head; there were 3 consignments that had 76 head; and there were 12 consignments that ran from 80 to 101, and it is manifestly impossible for any person to make a guess, considering the fact that the receipts were as varying as they were in the instant case.

Mr. Miles: Now, Mr. Examiner, in view of the extreme excessive coaching of the witness by the so-called figures just read, I will withdraw the question; it would be useless to follow it. That is all.

Redirect examination:

Our firm does not budget its expenses in advance. The control we have over our expenditures, there are some of the expenses over which we have no control. They are the minor items, though. We don't know how many postage stamps we are going to use, we don't know how much stationery we are going to use. We know how many employees we have and what their pay is, we know what our rental is, and fixed charges we know; and the others are minor. The policy our firm has with respect to the control of expenditure for advertising and soliciting, follows along as business goes. We run a file of customers, the majority of them come fairly close to finishing their livestock for mar-

ket within the same season each year, that is, perhaps from a period of at least six weeks or two months one year with another, and the stenographer who keeps track of the mailing list, the circular list, and things of that kind, puts into the active list, that is, the one which is posted, those names [fol. 1035] a short period before the time arrives when normally these people market their stock. That name stays in there until the stock comes to market or a short time has passed beyond the period when they normally come to market, and if we get no results, then, some special effort is made to find out why; then it is taken out and passed into the inactive list and the expense ceases on it.

Miss Reker handles our mailing list and the keeping of that customers' record list. I do not know how many people we have on our active list because that changes continuously. I could not tell you offhand. We make various efforts at different times to try and revive the inactive list, but if we have no success, they pass into the dead list.

Mr. Charles H. Boothroyd, a witness, called by the Respondents, testified as follows:

Direct examination:

I reside at 3968 Lake Park Avenue, in Chicago. I am one of the stockholders of H. D. Copeland & Co., and am President of the corporation. We are incorporated under the laws of the state of Illinois. There are four owners of the stock of that corporation. And I am the principal stockholder. In addition to being President of the company, I sell steer cattle.

[fol. 1036] My experience in the livestock industry before coming to the yards, I started in the poultry business in Iowa, merged from that into the buying of livestock and the butcher business up until I was twenty years of age. When I was 20, I came here and engaged in the livestock commission business; that is over 40 years ago. My first employment here on the stockyards was selling cattle. I got my experience in the country before I came here; I bought livestock for my father, we had two meat markets, and I butchered cattle and worked in the market. I have sold all kinds of cattle at Chicago in the last 40 years. I

started in with calves, and sold them for about a year. Then I sold calves and butcher stock, for about three years. I then sold steers and have been selling steers ever since.

The firm of H. D. Copeland & Co. has been in business since 1893. H. D. Copeland & Co. was organized about 1890 as Van Orsdol & Lindley. In 1893 Mr. Copeland bought out the Van Orsdol interest and it ran as Copeland & Lindley about one year and then Mr. Copeland bought out the Lindley interest and it ran H. D. Copeland & Co. from then on. I was with H. D. Copeland in 1893, and from that time on. I have owned the largest interest in H. D. Copeland & Co. since 1910.

H. D. Copeland & Co. under the Revenue Act of 1918 was found to be a personal service corporation and given that classification.

[fol. 1037] There are three active cattle salesmen besides myself and one who sells occasionally, sells when one of the other men is away. During 1932 I think we had one more; Tormehlien sold for us in 1932. He passed away six months ago and his place has not been filled.

We have three yardmen in the cattle division. I cannot say for sure how many we had in 1932. We took on Charlie Boothroyd in December or about that time of last year. I don't just remember the date. He was not put on by reason of the fact that he was a relative of the stockholders of the corporation; we had to increase our force in that respect. T. S. Boothroyd sells butcher stock and buys feeders. George Kidwell sells steers and yearlings and buys feeders. Mr. Tom Vincent sells all classes, and I confine my activities to steers only. I do not recall that Mr. Tormehlien was hurt before the first of January, but he was kept on the payroll after he died to even up his account. I do not believe that I ever saw the profit and loss statement, Exhibit C of Government Exhibit 15-21, for the year 1932; after examining the exhibit which was shown me, I believe that the exhibit substantially reflects the profit and loss for the year 1932. It has been my duty with the corporation to handle the affairs of the corporation with reference to the expenditures that are made, both as to salaries and expense items. In the exercise of that duty, we made an attempt to curtail our expenses during the year 1932. We made no expenditures which I believed were unwise or extravagant.

[fol. 1038] As to who had charge of the matter of who

will do the soliciting in the country and the trips that were made during the year 1932, I was consulted part of the time, and part of the time not. There were no more men going out, that is, over the two, they would ask me often, "Is anybody going out? I would like to go out some place," and I would either OK the trip or disapprove of it, but not always; but in the majority of cases, yes. I have general supervision of the hog yards, but I do not exercise it. Mr. McClelland has charge of that and Mr. Fawcett has charge of the sheep. Mr. McClelland is the hog salesman and Mr. Fawcett is the sheep salesman. Mr. Fawcett is treasurer of the corporation and Mr. McClelland is Secretary. Mr. T. S. Boothroyd who is the cattle salesman is the vice-president.

I reach my office in the morning between half past four and five in the wintertime, and in the summertime about half past five. In the wintertime, most every day except Sunday. Upon my arrival at the office, I take up the correspondence, line up the work for the stenographer while I am outside, and look over the list for those who were about ready to come and advise with them as to when they should ship. After I completed that I go down to the cattle alley and sort my cattle.

To describe how I go about selling steer cattle that are consigned to H. D. Copeland & Co., as the shipments arrive, the first procedure is to get them properly sorted as to fit into the market, and what the particular and peculiar con-
[fol. 1039] ditions of the market are at that time, sort your cattle accordingly. After they are sorted, they are watered or watered a little while before the opening of the market and they they are placed on sale. They may be sold to the first man and they may not be sold until the next day.

You don't treat all buyers alike. Some buyers would not buy cattle if you ask him the taking price. You have got to put on for him and take off. So we fit the asking price to what we think the—as long as it is above the value of the cattle, we fit the asking price according to our buyers to some extent. We do that to get a good price. Men trade differently, and we have gotten acquainted with those peculiarities by reason of having traded with them for years. There is no well set rule as to how a man trades with a buyer. Each sale is an individual operation of itself, has no connection whatever with any other [redacted]eal or any other

sale. Each consignment and each part of each consignment which is sold separate is treated as a separate transaction, and the sale is conducted on that basis. The changes that have been most apparent to me in the handling of steer cattle on this market in the last ten years, are, some smaller sized shipments, more highly mixed, that is, all varied grades that arrive in a shipment and the change in the buying, the system of buying; as well as the mode of arrival. The change in the mode of arrival has tended to reduce the number of animals in each sale. The packers have adopted what would among salesmen be known as practically an [fol. 1040] order business. Every load of cattle they buy, they have a particular, specific place for that. They practically have an order for that load of cattle before they ever buy it. Most of the packers have one crew that buys the shipping cattle and one that buys the house cattle, the cattle for local slaughter. The others are for shipment to the slaughtering plants that are located east of Chicago or elsewhere. The effect of the changes upon trading has been that it slows up the trading and you have to find a particular buyer for a particular bunch of cattle. We used to wholesale them years ago and sell a five or six load bunch of cattle all at one price, all in one bunch, and now it is uncommon to sell two loads of cattle together, and usually if you have two loads, we most always have to size them to fit particular orders. I may sell both loads of cattle to the same buyer, but he sends them to two different places. The packer buyers are more limited in their ability to trade than formerly. They get specific instructions in regard to certain animals as to class and grade more frequently than heretofore; they don't overbuy their orders like they used to. The main requirement of a competent steer salesman is to be honest. He has got to know the goods he is selling, has got to be a good judge of cattle, the dressing merits, and what they will weigh, and the quality of the cattle, and how they will probably grade after they are dressed. He has to be a good trader, a good judge of other people and use the right kind of trading tactics that wins the buyer's confidence, and he must be familiar with at all times, and be able to sense market conditions and the change in those [fol. 1041] conditions as they confront him, and be able to take advantage of them at all times, the unseen market.

The value of an article is determined by the ideas of the buyer and the seller, and it is to sense the pulse of the market and the feeling of the market, whether it is getting stronger or getting weaker or as to how he shall operate, if he operates successfully. The cattle are for sale to any man who wants to bid on them, regardless of who he is or what he wants to do with them, but to save time and get the best results we aim to show the cattle to those we think are the most likely buyers.

The market conditions on the Chicago market, two days are not alike and they often change every hour. The buyers for steer cattle on this market are shippers, packer buyers, order buyers and traders. We have also the order buying end for the packers and the order buyers on pick-up loads and buying on eastern orders, we call them eastern, although some of them go to Milwaukee.

We find it of value to the firm to have the various types of salesmen that we employ, some to sell steers, butcher stuff, calves, because the same buyer that buys calves does not buy any other grade of cattle. The man who buys cows does not buy calves or other grades. You have to have a salesman to meet the same class of buyers. The transactions move so rapidly that one man could not conveniently and beneficially sell all grades to the owner's best [fol. 1042] advantage I would say. So that has become necessary on account of the actual trading conditions on the market. There is a separate market for each grade and class of cattle. I mean that cows could be 25 cents higher and steers could be 25 cents lower the same day. The same is true with the various grades of steers I may have for sale. Yearlings could be partially higher and heavy cattle partially lower, both in the same hour. And stockers and feeders could be steady. One of the conditions that cause the prices to change from hour to hour and from day to day is that we take notice of more than anything else the buyer getting his orders filled. The shipper buyers come out and start the market off with a lot of pep, and they get their orders filled, and they begin to slow up and it is a cue to the packers to hold back and he holds back, takes in the bargain.

We may have receipts of, say, several thousand cattle on one day, many of which will be of a particular grade, and on the same number of cattle on another day the grades and

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classes would be entirely different as to the volume of those grades and classes on the market. So that in the case of any given number of cars being received by us, it may be that we will have more different grades in one day's receipts of the same number of cars than in the case of another. One day our cattle may all run from 1050 pounds down; another day practically all our receipts will run from 1050 pounds up.

[fol. 1043] The buyers are always bears on the market, regardless of how bad they want them.

I decide when a bid in my judgment represents what I feel is the strength of the market by intuition, and that is based upon the experience I have had in the years I have been on the market; and the observation of the changes that have taken place in the trading and keeping up to date generally with the trading. I always make up my mind what I think they will bring on the market before I show them. I am familiar with all the activities in the cattle alley both as to steers and butcher stuff in a general way. I know what our men are doing. I know whether or not they are using their time properly, as to whether there is a lot of idle time or whether or not they are busy. In the matter of handling by the salesmen and the carrying out of their duties during the trading hours on this market, I found that during the year 1932 that the salesmen that we employed in the sale of cattle were reasonably well occupied throughout the trading hours of the day in order to dispose of the business handled by H. D. Copeland & Co. I do not feel that the business of H. D. Copeland & Co. could have been handled to the advantage of the producer who shipped cattle to you for sale by a smaller number of persons than were employed in the sale of those cattle during the year 1932; we could not have handled the business with any less help without losing business. The condition that would cause us to lose business would have been the improper care and bad service to the man that we represented.

[fol. 1044] We had six salesmen, Mr. Frank Hartman, only selling occasionally; and Mr. Tormehlien who was injured during the year, but including those men in the average, we had an average of 282 cars per salesman as against a market average of 394 cars. It was just incidental; be-

cause our average per salesman was lower than the market average would not change that; we could not have gotten along with any less help. We reduced salaries several times and made several reductions.

I cannot account for that much reduction in the advertising between 1931 and 1932 except that we were spending just as little money as we could, carrying on the business just as economically as possible. We cut off two telephone extensions to save money. We were not able to save with respect to rent. We did not change our lighting system to any appreciable degree. I don't believe we spent any money getting business unwisely. The results were not so favorable in 1932 as they were in 1931 with reference to profit, notwithstanding a desire and an effort on the part of the corporation to reduce expenses wherever possible.

The corporation of H. D. Copeland & Co. and the business that it does, represent many years of painstaking effort on my part, as well as that of my associates. There has been spent a large sum of money and many years of effort to make H. D. Copeland one capable of rendering excellent service to our patrons.

[fol. 1045] I see no reason whatever that the rates should be reduced, the present commission rates; history shows that the price level of livestock rises and falls according to conditions and it never stays at one level; if it has reached an abnormally low level, it is soon followed by a high level.

After examining Government Exhibit 58-21 and Government Exhibit 15-21, and having examined the items of expense as set forth for the two years, I see no items in either schedule but what I consider very conservative. We have rendered every necessary service to our patrons during the years 1931 and 1932.

Cross-examination.

The difference in the profit between the years 1932 and 1931 was so small, it cannot be attributed to any one particular thing. I would not know why the difference. The character of our employees as to industry and efficiency is as high now as it ever has been since my contact with the firm. I think the salaries paid to our employees for the various classes of labor fair, just and reasonable. They

were all made just as low as I could possibly make them and retain the men. With reference to my own salary, it is a straight salary. We never aim to permit the principal of the business to draw a salary so large that it will embarrass the business. If our business would fall off to a considerable extent, my salary would be reduced. Preliminary to my going out to the yards actually to engage in [fol. 1046] selling, information as to the volume of receipts on the Chicago yards is marked on the Board; the prices of the previous day are not so marked. With reference to information about other stockyards, I have what is posted on the board and the market papers I read from the other markets. The purpose of obtaining information as to the receipts and sales at other yards is to keep posted on what is going on. I think keeping posted is of material benefit to me, because if a Nebraska customer wanted to know whether I thought he should sell at Omaha or come to Chicago, I would be in better position to tell him. I do not believe the receipts and sales at other yards influence the prices at Chicago. I think that this yard stands on its own footing as a price making market. I would not admit that during my time as a salesman that I have made errors in judgment and sold cattle at less than what we may call the fair price. As to whether I mean that I don't want to admit it publicly, I am not admitting it. As to whether I believe at times I have over-sold the buyer, that is, gotten really more than the market price, a drove of cattle might be worth more to one buyer than they would to another. I think I have gotten the better of the bargain at times. And I am willing to admit that sometimes I may have gotten the worst of it. I am only human.

We do not hold over cattle very often. Unless the owner advises to the contrary, we sell whatever we receive the day it is received.

[fol. 1047] Q. Yes, sir. As a matter of your actual doing of the thing, assume now that you had but a single carload in this morning, would you devote the entire morning in selling effort on that one carload.

A. I cannot answer that question.

Q. Assume that you had ten carloads, in your opinion would you devote any more time to selling the ten carloads than you would for the one?

A. It all depends on circumstances.

Q. Now, what circumstances would affect——

A. I might sell the ten cars of cattle in the first half hour and I might work all day long on the one car.

Q. Then it depends on what we may call the buying capacity?

A. It would really just depend on how we got off on the market and what luck we had in meeting the buyer and getting the buyer in just the psychological moment when he was in the notion and you were, too.

I don't know that it is more difficult to sell a straight carload of steers, we will call it prime quality and single ownership, today than it was ten years ago or five years ago, but it is more uncertain. I do not know the most profitable year we have had beginning with the year 1923 and ending with the present year. We had more profitable years than during the year 1932, which was due to the volume. The commission rates were the same.

Q. Can you tell us the greatest number of head of steers that you have sold this present week, and by you, I now mean you, personally, and not your firm?

A. No, sir.

Q. Do you know how many head you sold yesterday?

A. No, sir.

Q. Nor any day?

[fol. 1048] A. No, sir.

Q. Now, could you give us the greatest number of carlots of steers which your firm has received any day this week and which you have personally sold?

A. No, sir.

Q. Do you know the greatest number of carlots your firm has received this week, any one day?

A. Exactly, no sir.

Q. Could you approximate it?

A. I would not attempt it.

Q. In your opinion, is there any reason why your firm cannot handle the average number of livestock handled by other firms on the Chicago yards? If so, what, in your opinion, is the reason?

Mr. Boyd: Just a minute, I object to that unless the question includes in it the employees that were used in

handling that average, and apprise the witness of what the average is.

Mr. Miles: The distinguished counselor has already introduced a statement in this record showing the average number of head handled by the various firms and the number handled by this firm. I would be very glad if the witness can tell us why in his opinion his firm cannot handle an equal number of head with the average for the market if he has an opinion.

Mr. Boyd: With the same force?

Mr. Miles: Let the witness qualify it in any way he will. He may use the same force.

The Examiner: The witness may answer. Read the question.

The Witness: We can handle the same number, but it is possible during that period of time we did not, but that is not for lack of ability, but just because our receipts happened to run that way.

My attention is called to the audit for our firm marked Schedule 2, and I am of the opinion that the first salary is mine and the second one is my brother's. I note there is a [fol. 1049] difference in the salaries under the caption of non-owners, cattle salesmen. Briefly the salaries, or the difference in salaries, Nos. 1, 5, 6, and 7, I think it is based on ability and the importance of the department and the service, quality of service rendered. It is not generally recognized that the cattle department is of major importance with any commission firm. Some firms have their cattle department as their major source of income, and other firms their hog department their major source of income, and some firms their sheep is their major source of income. I don't think the importance would depend upon the gross income yielded by that department.

With reference to the first two numbers on the firm, there is a senior, it is a senior and junior position. One directs the policy of the business, guides it in all of its affairs and through all the rough waters, and the other one takes orders and does what he is told to do. Part of this would be due to a superior knowledge of the business, how it should be done and what should be done, and the other is the selling of the more important higher priced cattle. To some extent the superior knowledge of the business would

reflect itself or be utilized in the management of the business. I believe the item "Reserve for Contingencies" is a $100 a month set up for mortgage and theft, selling cattle that might be mortgaged; we carry our own liability. We carry the item for six or seven years ourselves, defended a couple of suits successfully, but paid out nothing from the fund.

[fol. 1050] Redirect examination:

To some extent we have attempted since my connection with the firm, to confine or draw its business from a given territory. Our acquaintance in that particular territory has been made throughout the years we have been in business, and I have formed personal friendships among our patrons throughout those years in those territories. Our employees have particular territories in which they are well acquainted, better than some of the other salesmen. If they had a crop failure, certainly there would be less livestock produced in that territory. We are always looking to increase our business from any quarter in which we can increase it, but we always feel we stand the best chance to increase it out of the territory where we are best known. We do not draw any business from Texas, so that if we had a shortage of corn in Iowa, I would not consider it expedient or wise to attempt to go into Texas range territory, in order to make up that loss of business. What I would naturally have to do would be to maintain our services on its high standard until and if all our patrons could raise more livestock to ship to us.

We have a better chance to get a new customer out of territory where we can refer him to neighbors for whom we have sold and it has been more satisfactory than where we have to go into a territory where we are not known at all. We draw our business mostly from the States of Iowa and Illinois. Unless we did a certain amount of advertising, either by personal solicitation or through gen- [fol. 1051] eral advertising through the mail, we would naturally fade out of the market and out of the trade entirely.

Recross-examination:

I am not intending to leave the impression that I have some territory that is largely monopolistic. That is not

correct. The various commission men on the Chicago yards invade my territory. I would regard as my territory, I came from Humbolt County, Iowa. I was raised there and everybody knows me and knew my father, and he was a pioneer in that section of the country. A great many people ship to us out of knowing the family and knowing the record of the family.

MR. THOMAS E. SWINEY, a witness called by the Respondents, returned to the stand and testified as follows:

Cross-examination continued:

I personally solicit business. You might say that all of the active salesmen at some time or other have or do take short fliers in the country. Iowa and Illinois have been my principal territories that I have covered in making my soliciting trips. It is the intent and purpose of these trips to visit old customers. If by any chance there is any new prospects, we work on him as much as the circumstances [fol. 1052] will permit. They are generally patrons who have regularly shipped livestock to our firm. At times we go out into a new territory with an attempt to get new customers, but it is mostly on territory adjoining. It is easier to spread your acquaintance from a point where you are known so you can say "John Jones over in such a neighborhood has patronized us for a number of years and has always been well satisfied." In that way it is much easier to establish a contact. There is no territory where there is not soliciting more or less by other commission firms. There is no territory where our firm exercises complete control.

Our firm gets out a market letter which contains market information compiled by the different salesmen with respect to those things that they sell, personally, so that it has that touch to it. There is not much of the space taken up with an urge to shippers or prospective customers to send their livestock to our firm. It is generally taken for granted and assumed that those who have shipped to us in the past and indicated they were satisfied would in the future, and when they advise us they have stock on feed, we take that as an indication that their intention is

to ship to us, so that there is not much space in what we call market letters given to "Won't you ship to us?" It is more when it would be advisable to market certain kinds of stock. We do not give in that letter as a rule, if at all very seldom, quotations of prices received by our firm for certain classes and grades of livestock. We would not be [fol. 1053] giving a fair view of the entire market. We aim to show as clear as we can a fair picture of the market as a whole. We rarely ever mention outstanding sales made by our firm. In some instances it is true that our patrons require services of us which they did not require in 1923.

We often have a man give his time to bringing over two calves from the truck chutes, two or three cattle, five or six cattle, half a dozen cattle; back in 1923, it was rare that he came that there was not a full car shipment or possibly a two-car shipment. In the same proportion, the weighing, feeding, and the office work, the drafts at the scales, the tickets to be computed, the billing to the purchasers, account sales, the recapitulation sheets that are written upon the day's business, the checks that are issued on these one, two or three animal shipments, and they are issued separately, and then the truck man is paid for and the insurance company is paid for, and in some of them, when we get through there is nothing left. We find in some cases since the bank trouble, and it still holds true, by the way, some of these cooperative shipments, they are requiring a separate check for each individual owner.

I think it could be more easily named in saying that it has been turning from a wholesale to a retail business.

I think the chief factor in drawing business to our firm, the most effective thing that we do, is personal contact, along with having them satisfied that you receive and get for them the market prices. There was not a very large [fol. 1054] turnover in our customers, to a great extent, until financial trouble became so very severe. We lost a good many customers in that case. They found they were unable to finance themselves on cattle again. Once we get a customer he stays with us; that is pretty generally the case. I believe you will find that over 75 per cent of the business that we get are repeaters; in fact, we have some of them in the third generation in several families that I know of. It happens that our customers will divide their

shipments between our firm and another firm on the market.

Q. On direct examination I believe you were advised of the average number of cars or carlot equivalents per salesman handled by your firm, and in response to a question, you stated that fewer salesmen could not have sold the livestock, do you recall that?

A. Did I say that fewer salesmen could not have sold it, or could not have given the same satisfactory service?

Q. Well, I understood you to say they could not have sold them. Perhaps you may have added "and could not give the same service", I am not positive about it.

A. That would have been my intention.

Q. In your opinion, could your firm have handled as many cars or head of livestock as any other firm on the market of like kind and character, with the same organization?

Mr. Boyd: Now, Mr. Examiner, I object to the question for the reason that the witness is not advised as to what his own business constituted nor what another firm of like kind and character means or who it has reference to.

Mr. O'Bryan: I object to the question on the ground that no proper foundation was laid for it, that there is nothing in the record so far that indicates that there is any other [fol. 1055] firm of like kind and character or that the witness knows there is any other firm of like kind and character. It is a question assuming a fact which is of too general a nature to permit of an answer.

Mr. Dagger: Well, Mr. Examiner, I am at a loss to understand how counsel knows what the witness knows. This witness seems to be an intelligent man, knows about the market, knows conditions on the market. We object to counsel indicating to the witness what he does or does not know.

Mr. O'Bryan: I am not indicating to the witness what he does or does not know. I am indicating wherein your question is deficient in that it does not make any assumption on which the witness can base any answer.

Mr. Dagger: I am asking the witness to state what he knows in his mind from his experience as a matter of fact.

Mr. O'Bryan: What fact?

Mr. Dagger: Just what the question said.

Mr. O'Bryan: The question does not assume any facts upon which he can base an answer. That is the very point of the objection.

Mr. Dagger: I am not asking the witness a hypothetical question, I am asking him a question based upon his experience.

Mr. O'Bryan: Based on his experience has to be based on some facts.

Mr. Dagger: There are plenty of facts in the record.

Mr. O'Bryan: No proper foundation laid for a question of that kind.

Mr. Dagger: No further argument, Mr. Examiner.

The Examiner: Read the question.

(Whereupon the question was re-read.)

The Examiner: Objection overruled.

The Witness: I think that is a question that I cannot answer with any degree of certainty. The other organization [fol. 1056] might have as many people and yet the two might not be of the same ability or the same efficiency.

Mr. Dagger (continuing): In your opinion, are your salesmen and your employees as efficient and as able as any others on the market?

Mr. O'Bryan: I object to the question as being too general in form, no proper foundation laid for it, and no testimony from the witness that he knows what the efficiency of other salesmen on the market is.

Mr. Boyd: And I object to the question for the reason that the witness has not shown that he knows the capabilities of other salesmen on the market, nor their capacity.

The Examiner: Read the question.

(Whereupon the question was read.)

The Examiner: Objection overruled.

The Witness: We consider them so. I don't know whether that is——

Mr. Dagger (continuing): Well, do you know of any reason why your firm, with the organization that you have, could not handle as many cars or head of livestock of like kind and character as any other firm with the same type of organization as yours?

Mr. Boyd: Same objection, Mr. Examiner.
The Examiner: Objection overruled.

The Witness: I know of no reason.

Mr. Dagger (continuing): You answered in the affirmative to this question: "If there be too many men in business, is it not because shippers consign livestock to those people for sale?" Do you recall that question?

A. No, I don't recall it.

Q. In answer to that, you said: "Yes, sir". Do you recall what you had in mind when you answered that question?

A. Not that question, I don't recall the question, but I would give the same answer to a question of that kind.

[fol. 1057] Q. Was it your thought when you answered that question that the shippers could control the number of commission firms in business?

A. No, not so much as the fact that they still retain the right to select whom they choose to ship their livestock to.

Q. You know of no restrictions on that?

A. I don't. I have never heard of any.

Q. And do you know of any restriction with respect to the number of firms that may engage in the business on the market?

A. No, I do not.

Q. You were asked a question in regard to what would happen if your firm could sell twice the cattle or get twice the cattle to sell in 1934 that it had in a previous year, and you stated that you would like to discover some way of doing that, do you recall that?

A. I don't recall it, but I would be very glad to find some way to, yes, sir.

Q. Now, why would you?

A. I think that would be more profitable.

Q. Why?

A. Greater income.

Q. I beg your pardon?

A. Greater income.

Q. Could you handle more business with your present organization?

A. I believe so, if it was to come within certain limitations, that is, divide itself up evenly so that in no day there would be a greater amount than we could handle with

the present livestock, but unfortunately livestock never comes that way.

Q. What do you regard your maximum capacity for any day?

Mr. Boyd: I object to that question unless it is shown with sufficient definiteness to indicate to the witness what [fol. 1058] is meant by "maximum capacity," what kind of business is supposed to be handled and the circumstances surrounding its handling.

Mr. O'Bryan: I object to it on the ground that "maximum capacity" without any type, species, grade or quality is entirely too indefinite. The question has no proper foundation laid for it. He is asking him what his maximum capacity on any given day is and this witness is qualified only as a cattle salesman and the question refers, I take it, to any species of livestock; it takes into consideration none of the market conditions surrounding the day in question and is not properly founded on fact at all on which an answer can be based.

Mr. Dagger: I tell you, Mr. Examiner, the question relates to cattle, the species in regard to which this witness testified on direct examination.

The Examiner: Read the question.

(Whereupon the question was read.)

The Examiner: Objection overruled.

The Witness: That is an unknown quantity. So many elements take part in that, it would be impossible to give even any estimate until that day had come and gone, until the thing was sold, until the day's work was completed.

Mr. Dagger (continuing): Do you ever turn down any livestock that is shipped to you for sale, refuse to accept it because you have too many?

A. No.

Q. As a matter of fact, Mr. Swiney, your firm as now organized would handle just as much as you can possibly get on any one day, would it not, and would be glad to get more?

Mr. O'Bryan: I object to that question as being too general, they can handle as much as they can get on any one day. They might get the total receipts of the market on any one day and it is obvious they could not handle it.

Mr. Dagger: Counsel now suggests to the witness an impossible condition.

[fol. 1059] Mr. O'Bryan: It is an impossible question to answer, as all of these questions are.

Mr. Dagger: Not at all. The questions have all been directly responsive to the witness' previous answers to a question.

The Examiner: Objection overruled.

The Witness: Am I to answer?

The Examiner: Yes, sir.

The Witness: Will you read the question, please?

(Whereupon the question was read.)

The Witness: That is beyond my power to answer because it is possible for a firm to receive more than they can handle.

Q. Do you know of that happening within recent years?

A. Oh, I don't recall it just in the last few years, but it has been the case.

Q. When?

A. Some years ago, when receipts would be heavy for some particular day or some particular period or week, and then again I have seen the market in such condition so that we have carried cattle from day to day and sometimes week to week with no fault of ours, and I think there was a time back about 1926 when I don't believe any firm in the yards had their cattle yards cleaned up completely for a period of several weeks.

The carrying of livestock from day to day and week to week as a general proposition, does not happen, but it might take place, has taken place. When livestock is carried from one day to another, it is because of the capacity of the market to absorb it. The salesman offers them for sale but he is unable to complete the transaction. I do not recall the largest number of head of cattle handled by our [fol. 1060] firm in 1923. I haven't any idea. I think the congested condition which I spoke of in 1926 continued for several months. I mean the condition existed for that long; there was a period there when there was excessive receipts of heavy cattle and the buyers could not use them all and they would come out in the morning and say, "Well, I will try and use a couple of loads from you today; I have to treat the rest of the boys equally as well and I will spread

my orders around and give you a chance at them." If you had any in excess of that, they accumulated on your hands. Some cattle were carried much longer than a week. It was not because they were undesirables, because they were good cattle, but there was more of that type of cattle on the market than the packers chose to take and put in the freezer. They were eventually disposed of. I do not recall the largest run we had on any one day during that period. I do not recall the largest number of livestock or cattle that I personally have sold in 1933. I do not recall the largest number of cattle I sold any one day this week. I do not have that in mind. I sold cattle this morning. There was a moderate run on the yards today. I couldn't tell you exactly how many I sold; I don't think it would exceed, in total, exceed one car if they had all come in one shipment. Part of them were received by truck and part by car. Today we had an active market on the better grade of corn fed butcher stuff and a dull, slow and lower market on grass butcher stuff. I sold all the butcher stuff for our [fol. 1061] firm today including the bulls. I will try to tell you from memory into how many lots I sold the butcher stuff today. I would say there were just about fifteen sales in what would not exceed one total car if they had come in one shipment. The market opened around 8:00 to 8:30. I finished up about 11:30. I would not say that this morning was as typical of our week's business. Sometimes receipts get in early and you get a chance to handle, go through your cattle as a whole, but other times they string out all day. We had cattle that arrived after 11 o'clock in truck today.

As to whether Thursday is one of the days of heavy truck receipts generally speaking, that depends entirely on the previous day's market as to what the truck receipts may be the next day, as to whether they will be large or small. There is no way of telling in advance. One Thursday might be heavy and the next one light.

Redirect examination:

Q. Now, Mr. Swiney, from the standpoint of the commissions earned monthly and using the work sheets of the Government, as it reflects the income from the various types of receipts in January of 1932, the total commissions earned by your company according to those figures was

$5,324—I will drop the cents,—of that amount $455 was the commissions from straight cars; $3,125 was the amount received from hogs in straight cars; drive-ins amounted to $142 for cattle and $192 for hogs. In the month of July of the same year, the total commissions were $2,409, less than half of that earned in January; the straight cars amounted to $126; the hogs $839 in straight cars; the mixed, plurals, which include cattle and calves, amounted to $247; the drive-in cattle was $101. Now in the month of August, [fol. 1062] the following month, the total earned was $4,208; the amount in straight cars was $748 in the case of cattle; hogs $1,180; drive-in cattle $237; drive-in hogs, $302. In the month of September, the total amount was $3,697; the straight cars was $675 cattle; $1,146 for hogs; $126 for drive-in cattle; and $627 for drive-in hogs. Now, in January, the amount received from straight cars, cattle, as compared with the commissions received from hogs was one-seventh. In July, it was two-thirds, about 7 to 1,—$126 to $839; and, in the month of October, it was $849 in the case of cattle and it was $839 in the case of hogs, or almost equal. Now, in the operation of the commission business and the operation of your business, regardless of what the rate may be, and without considering it in any manner, shape or form, can you conceive of any method which could be used by you in the operation of your firm, whereby you could make the various departments do the same amount of work monthly and produce substantially the same amount of income monthly, when compared with the other?

A. No, sir, I cannot imagine that being done.

Q. Now, the total revenue for the first ten months of the year: In January, there was $5300; and it gradually dropped down until the month of July was reached, when it jumped back up above the point which had been attained in February, and then it shows that it moved back from $4200 to $3700 to $3500. Is it possible to avoid those seasonal changes in a commission man's business of the type of yours?

A. No, sir.

Q. So that you maintain a force, of necessity, to take care of the business that would arrive in January, and you would have to have that force to handle the business that you sold in July?

A. Yes, sir.

Q. And in July you only had one-half of the gross revenue that you had in January?

A. We maintain the same force, yes.

Q. And that was necessary to the proper conduct of your business?

A. Yes, sir.

[fol. 1063] Q. Does it indicate to your mind that because you only received $2400 in commissions in July as against $4200 in commissions in August, that your men were not efficient in July and were efficient in August?

A. Not at all.

Q. Do you know how a change in rate by the Government, or if they contended that in July you were not so busy as you were in August and perforce you should have been busier in July, how a change in rate can in any sense change that fluctuation?

A. No sir.

Q. Do you know any method to meet the changed condition between July and August that could have been used by you, whereby you could have reduced your expenses in July in the proportion which the income for that month bears to the income the following month of August?

A. I do not.

Q. Now, during the month of January, you handled a very considerably fewer number of carloads than you did in August as represented by the commissions in the case of cattle. Now, in the case of hogs, you received $3100 in commissions for hogs in January, and $1180 for hogs in August, in straight cars. Now, do you know any means whereby you could have caused your August receipts to have approximated in commissions the amount earned in January?

A. I do not.

Q. And do you think the rate would make any difference as to that?

A. Not a particle.

Q. Was your force as efficient in the handling of the August business, in your judgment, as it was in the handling of the January business?

A. Yes.

Q. Do you believe, Mr. Swiney, that you sell for one man cattle that bring $7.00 a hundred and there are 20

head in one draft sold in one draft, and in another consignment there are 20 head of cattle in one draft that sell for $5.00 per hundredweight, do you think that the commission charge should be greater in the case of the $7.00 [fol. 1064] cattle than in the case of the $5.00 cattle?

A. No, sir.

Q. Is it not true that it may be more difficult or require more time, more effort and more expense to sell the $5.00 cattle than the $7.00?

A. That is frequently the case.

Q. So you do not believe commission charges should be based upon the selling price?

A. No sir.

One of the methods used by shippers of livestock to test the proficiency of salesmen they have been using is to split shipments with other firms at times, and in that way a shipper attempts to determine which salesman may sell his livestock the best. Under those circumstances, if we sell as well as our competitor, we are able mostly thereby to retain the man's business, but not entirely.

Notwithstanding the fact that the shipper attempts to make that test, it is not in every case a reliable test, because no two bunches of cattle are ever identically the same, and the circumstances surrounding the handling of cattle in one division or another may be somewhat dissimilar, due to the condition in trading conditions prevailing from hour to hour in the two divisions.

The buyers in my division may have orders suitable for a particular class of cattle and in another division the orders may not be as great, the demand as great. But splitting shipments is the best test of different salesmen's ability and is the only one the shipper knows.

[fol. 1065] Cross-examination:

When I stated that I considered our salesmen as efficient as any other salesmen on the market, that was only with regard to their ability to obtain the market price for the livestock they sell, and I was only referring to cattle.

I participate in the management of the firm, do not have charge of the employment of salesmen entirely; to a certain extent I do have a voice in the employment of salesmen. In my opinion the volume a salesman can handle is

a factor in his efficiency when I am considering employment of salesmen; also the patronage that he can bring to that firm will have something to do as to whether he is desirable to have or not. I regard those as two vital factors, in addition to other qualities.

T. S. Boothroyd, called as a witness by the Respondents, testified as follows:

Recross-examination:

Q. Just how would you determine the efficiency of a salesman?

A. Well, if I were to determine it, I would determine it by the following he had.

[fol. 1066] Mr. E. G. Fulkerson, a witness called by the Respondents testified as follows:

Direct examination:

I live at 8910 South Hamilton Avenue, Chicago, and am president of the National Live Stock Commission Co. doing business at Chicago. I was raised on a farm in Missouri and when I was twelve to fourteen years old I went to buying and shipping livestock, and did that up until the time I came to Chicago. When I came to Chicago I was employed as a butcher salesman for the Drumm-Flato Commission Company. Started with them on the first of January, 1898. I was with them for three years and then Swift hired me to buy cattle for them, and I was with Swift & Co. for one year, and Drumm-Flato hired me back, sent me to Kansas City to sell Texas cattle, and I was down there for about a year and they transferred me back to Chicago, and I was with them for two more years. Alexander Ward and Conover at that time hired me away from them to sell their steers, and I sold their steers or helped sell them for four years and then the New York Butchers hired me to buy their cattle. The New York Butchers are now owned by Armour & Co. I bought cattle for them which were shipped on foot to New York. I used to ship

them probably a couple of nundred cars a week of the best cattle we could buy here in the yards which they used [fol. 1067] mostly for their Kosher trade, and then Tom Kelly hired me to sell the cattle for the National Live Stock Commission Co., or as head cattle salesman for the National. That has been 24 or 25 years ago, and I have been selling cattle and also been president of the National for the past 15 years. I own the controlling interest in the National Live Stock Commission Co. The National was one of the large commission companies when I went to work for them, and has been since I have been with them until probably last year, maybe the third now, I am not sure. We have five cattle salesmen at present; I think we had five in 1923. The record will show that. Mr. Frank Supplee is vice president and hog salesman, and Mr. Cruse is secretary-treasurer, and works in the office. Our cattle salesmen are E. G. Fulkerson, B. B. Miles, A. L. Crawford, F. J. Shorter and H. P. Augustine. Mr. Supplee, our vice president handles the hogs; Mr. M. J. Barsoe handles the sheep; Ethel Bogen is one of the stenographers and also runs our machines that we make out circulars on. Mr. John Brady is head alley man for Mr. Crawford in one of the butcher alleys. Ray Coleman is one of the bill clerks in the office; O. L. Davies is one of our office men, attends to collections and so forth. LeRoy Ellington is one of our yard men, trippers. F. A. Fitzgibbons is with Mr. Moberly in the hog department as a yard man and also works in the office in the afternoon. Elizabeth Fulkerson is my daughter. She was a stenographer until about a month ago. She is now at home. C. A. [fol. 1068] Hanrahan is our head man at the desk and general utility man and also works on the bills in the afternoons, and general handy man of all description around. Tom Healy is a yard man in Mr. Shorter's alley in the butcher alley. P. W. Moberly is assistant hog salesman to Mr. Supplee. Mr. McCarthy was a yardman in the hog division but he is not with us now; he left in July, 1932. John McDermott is my head alley man in the steer alley, and C. J. Napier is our cashier and remittance man, and bookkeeper and checks over the bills and so forth. A. G. Nelson is the yardman in the butcher alley and also makes trips driving. H. E. Pfoffenberger is assistant sheep salesman and yardman, assistant to Mr. Barsoe. G. R.

Reels was a yardman for us but is not with us anymore. We cut off every expense we could and we let him go. That was in July, 1932. P. M. Ryder is one of the yardmen in the hog alleys. William Shaughnessy is our tripper; stays at the chutes and helps, brings the shipments over to the pens and so forth. He is general yardman. Robert Slaughter is our check-up man at the chutes. Miss E. M. Wardle was a stenographer; she left and I put my daughter on for a short time. John Weller is a stenographer and William Young is a yardman in the hog division, general yardman. That covers 30 employees.

The changes I have made in my force since January 1st, 1933, I cut my expenses all I possibly could along to maintain our standard. There are a few of those that I [fol. 1069] named we have let go to cut our expenses.

I maintain general supervision over the operation of the company. I employ such persons as are employed with the exception of probably stenographers; I leave them to Mr. Cruse but I advise with him about them. I recall the circumstances of the rates being fixed by arbitration at this market. I was one of the committee that was in Washington. I think we had several sessions with Mr. Gore and Mr. Dagger. At the conclusion of their investigation, the arbitrators made the rates which are now being charged by me at the Chicago market. There have been substantially no changes in the rates that were made at that time that I can recall. I recall that the livestock industry was undergoing a deflation in prices, price levels during 1922 and 1923. I know that we had some low prices along about that time; I don't just exactly know whether that was exactly the low spot or not, but it was around that. I remember that livestock sold at least two or three times as high during the five or six years previous to that. The arbitrators made a reduction in the rates at that time. Since the low period reached along in 1923, I recall that the markets advanced until in 1928 cattle were considerably higher than they were in July,—I don't know just how much. I do not know of any proposal made by any person connected with our concern or any other that I am familiar with to raise the rates because the livestock prices were higher. [fol. 1070] There was no investigation made by the Government or any other person to adjust the rates in accordance with the prices that I know of. It is not my experi-

ence that livestock is easier to handle now and sell it on the Chicago market than it was in 1923. Our demand is very limited now, and our receipts are coming differently than they were in former years, more split up stuff, and it is harder to handle. I might also state that we have more specialties now. We have to get every class of stock pretty near; you have to go and get a different buyer to buy it. We have got men that buy this low priced cattle now and they have got others that will buy their shippers and others that will buy their house cattle, and it is a good deal like doctors nowadays, you have specialties, specialists, I should say. We used to take one man and sell him 40 or 50 loads of cattle but you cannot do that any more. I was talking about years ago. That was away back. In the handling of our business in 1932, I made an effort to spend no more money than was necessary in the proper conduct of our business; tried to make it all the way through.

I usually get on my horse around seven to seven thirty of a morning. On busy days, sometimes I get out a little earlier, on Mondays and Wednesdays, but as a rule seven to seven thirty, and I ride a horse all the time during the [fol. 1071] trading hours, practically all the time, so there are days, and it has been for some time, that it is practically every day because the markets have been bad right recently, that I would be on a horse for more than eight hours a day. Our other salesmen ride horses also. Practically all the cattle salesmen. Mr. Augustine probably does not require one all of the time.

In dividing up the hours, or after the work has been arranged for the day, I keep general supervision over the transactions in the cattle alley, I practically know what is going on in all the alleys. And they consult me quite often during the trading hours. I leave in the evening about 5:30 and go home. I have a long distance telephone in the alley and I get, I will say from five to fifteen long distance calls during the day while I am trading, from different sections of the country and from different markets. Last Tuesday night at nine thirty I had a call from the Yard Company here telling me that nine loads of cattle had gotten in and that the owners wanted some of our men to take charge of them and I asked them if they could not yard them and they said they could, but the man wanted some of our men there, and I tried to get ahold of my yard boys, but I

had to get in my car myself and to go up there at nine thirty. I finally got hold of one of them just as he came in from the Fair and I sent him up to help them yard them and feed them that night. That is one of the things that is [fol. 1072] not unusual that is required by our customers. Lots of time- from nine to twelve and one o'clock in the morning I have had them call me from different parts of the country over long distance wanting to know when to ship and what I thought of the markets, etc. The National Live Stock Commission Company receives livestock from all the States of the United States, from Canada, and the Gulf of Mexico, down to The Republic of Mexico and the Pacific Coast, and from Ohio and other eastern points. We handle all grades of cattle, hogs and sheep; including steers from the Northwest to Brahmas from the southwest.

Our trade consists of good sized farmers and feeders. Years ago we decided that it would be our best business for the future, and we have thirty odd thousands mailing list of farmers and feeders in that class of shippers, but we handle all classes incidentally and glad to get them.

As to the necessity for the expense which was incurred in soliciting business, getting and maintaining our business during the year 1932, I tried to hold it as low as I could to maintain our business, and we find that we have got to do a certain amount of soliciting along in order to hold our trade. Our old customers will die off and new ones will keep coming on, and then we have got to keep getting new customers, and a lot of our old ones don't even die off, but they go broke like they have in the last few years, and new ones take their places, and we have got to keep advertising and soliciting in order to keep our business up. I find that [fol. 1073] our force does not have time to comply with all of the requests that come to us to visit their feed lots. Lots of times we cannot go when we have requests. It is natural for us to attempt to have solicitors not only to see and appraise cattle, but solicit any other cattle that may be in the neighborhood ready to ship.

I consider that most of the business that comes to us is account of our service, and our service when we sell their stock, and also in keeping them posted and in keeping in personal contact with them.

While our reputation and our service may be of the best, it is necessary to expend a sum of money for soliciting and

keeping them constantly posted as to the markets. We cannot just stop. If you do, your business slips.

We employ our salesmen from year to year, make a contract at the end of each year with them. We attempt to keep just as small a force as I can get along with and give good service. With the large amount of business that we have, we have periods of the year which require a greater amount of time in the handling of the business than at other periods or other seasons. As to what I have to say of the ability of a commission house to so arrange its business so that they will not have fluctuations from month to month, or from season to season with reference to receipts, [fol. 1074] we have been established for 45 or 50 years, and even before my time our former president, Mr. Kelly, decided that we should be well known all over the different sections of the country and he worked to that end, and we have done the same thing since I have been president. There are certain seasons of the year, for instance, South Dakota, in the Spring of the year will ship—they feed their cattle through the winter and have them here in the spring of the year through probably April, May and June, that is Dakota time, and the Illinois will probably come in a little bit later, and then a little later Iowa and Missouri will come on, and we are pretty favorably known all over the country, have advertised and kept in close touch with our customers for years, and that is one reason that our business runs a little more regular than some of the others because when one territory runs out we are well known in the others and they will come along and fill in.

The market average for Chicago shows that 54 per cent of the cattle business comes in straight car singles, and that our average is 77 per cent.

Q. By the use of five salesmen, Mr. Fulkerson, the record discloses that you sold an average of 1,043 carloads or carload equivalents of cattle per salesman; that the market average at Chicago was approximately 394 carloads or carload equivalents of cattle. Will you indicate, if you know, how the business of your firm differs in so far as you know it, with that of other firms handling a smaller number of cars per person?

[fol. 1075] A. Well, ours come in larger bunches, straighter bunches. I mean by larger bunches, straighter bunches. We get in the spring of the year from now on

for a while, we probably get a pretty fair run of meal fed Texas, and they will come pretty good, four, five or six or eight loads in a bunch, and sometimes larger; and in the fall of the year we get a fair run of Westerns, which come in larger bunches, and then our feeders are possibly a little larger than some of the other firms; they ship larger strings of stuff. That is about the way I would figure it out.

Q. Do you employ salesmen for the reason that they can sell a given number of animals per year or a given number of carloads per year?

A. No, sir, I employ my salesmen for their ability in handling the stuff.

Q. And what do you mean by "their ability"?

A. Knowing the market and the values and pleasing our customers.

Q. The record shows that you handled in head per draft 5.82, that the market average was 4.14 does that indicate to you that your salesmen would have necessarily a greater performance by reason of that fact than the market averages?

A. It would indicate to me that we get them in a little larger bunches.

Q. And are able to sell them in larger bunches?

A. Larger bunches without sorting them quite so much.

Mr. O'Bryan: Is that all species, Mr. Boyd?

Mr. Boyd: That is cattle, only (Continuing.) That in your case the drafts per carload of cattle and calves was 4.58, that the market average was 6.85, which would indicate what, with reference to selling?

A. That we sold them in larger bunches, wouldn't it?

Q. Is that what you think is the fact?

A. Yes, sir.

[fol. 1076] Q. All of those conditions would, in your judgment, enable your salesmen to perform a larger amount of work throughout the year?

A. Yes, sir.

Q. And by reason of the fact that you cover so extensive a territory and that when cattle have finished in Dakota and start from Missouri, that you are thereby enabled to provide salesmen with a more even distribution of receipts, enabling them to have a greater capacity?

A. Yes, sir, it is having your customers more evenly distributed around in places where stuff comes from at that time of the year, that section of the year, gives us more volume.

Q. And the fact that your customers ship in larger numbers per consignment, permitting a larger number of head to be sold per sale, enables your salesmen to have a higher performance?

A. Yes, sir.

Notwithstanding our attempt to equalize the flow of business as far as we can to our concern, we cannot even it up close. You cannot help that. There are certain seasons of the year where they are short in some sections and over run in others and you cannot help those things, you have got to keep your force on hand to handle them in the case of a peak.

Q. Tell me, if you will, please, the conditions which you as a salesman of long experience and as an employer of cattle salesmen, believe must be known before an estimate as to the amount or quantity of cattle that can be sold on the Chicago market may be made?

[fol. 1077] A. Well, there is no way of estimating that that I know of, Mr. Boyd. One day we have orders or our shippers will have pretty good orders for shipping cattle and the next day they will be light on shippers, and may be the day that they have good orders for shippers the fellows on the house cattle will have light orders, and it is mighty hard to tell how, I would not know how to answer that question. I don't get the thread of it, someway, I don't believe—you better modify that and ask me it over so I can understand it thoroughly.

Q. Would you read the question?

(Whereupon the question was read.)

A. I don't think there is any way of knowing or telling how many cattle a fellow can sell or estimate it. I would not know how to. You have got so many things that come in there that you have got to analyze. It is according to your receipts, according to your demands, and take it now, we have got so many different varieties of cattle, that you have got to get buyers to buy them, that it is hard for me to answer that question correctly.

It has been my desire to earn as much money as possible for the corporation consistent with the rendition of first class service, and in conducting the business of the National Live Stock Commission Company, I have had no more employees than I thought necessary to perform that service. And I paid them no more than I believed their services were worth in that performance.

I did not spend any money that I believed was not spent in the exercise of good sound business judgment. To the best of my knowledge, the solicitation was warranted. There is nobody in this business that is doing any solicitation but what they think it is beneficial to them. I think that all of the solicitation that we did and all the trips we [fol. 1078] made were warranted, and I might also add that I think they were profitable to us when we made them. I have several requests at the office now for me to come to the country to see cattle in different spots at this time. I have a letter from G. B. Carpenter at Hamburg, Iowa; he and his son feeds about 800 cattle each year and I have a date to go out, he wrote me and asked me to come out on the 11th of August. Mr. Morgan Bohart at Plattsburgh, Missouri has also written me to come down there; he feeds about 1200 and I have other various letters there. I make a trip to each of these places each year and they look forward to it and expect me and I might also add that it never costs me a cent on earth for any automobile hire when I get to those places. They meet me and take me all over the country, and are tickled to death to have me come.

As to whether I agree with Mr. Marshall of the Wool [fol. 1079] Growers, the people that I go to see do not feel that there is too much solicitation, they always have a good chicken dinner for me and everything and they are glad to have me and always ask me to come back.

In the case of my firm the cost of business getting cattle and calves per carload, the records indicate that we expended $3.23 per carload for the year 1932; I feel that that entire expense was warranted, if I didn't I would not have put it on there, and I feel it was necessary in the service which we rendered to our customers. And necessary to maintain our business on a profitable basis. It would be necessary to pay our salesman the same salary even though they did not go to the country, because we hire our salesmen by the year. They are paid by the year.

Our salesmen are given their vacations during the lightest periods we can find, which is along about April, May, June and the first part of July, and then we aim to let them go on a Wednesday evening and probably spend the following week, give them a little extra time.

As I hire a salesman, I do not consider the number of cars he can sell at any given period. I consider his ability, his honesty, and integrity and how he will fit in our organization and with our customers. I don't employ a salesman on account of so-called business-getting ability. I always try to, and I think I have, employed salesmen that can gain the friendship of our patrons. If I were about to employ a [fol. 1080] salesman and wanted to employ an efficient man, if I knew that he had a knowledge of cattle and the ability to trade, was honest, I would not, as an incident to my bargaining with him say, "How many cars of cattle can you sell in a year?" I would figure if he had the ability he would handle the stuff, and when I hired him, I would figure he had ability to go ahead and handle the stuff and as to whether or not he had actually sold or could sell 500 or 1000 cars a year, that would not mean anything to me as to his ability. An attempt to guage efficiency of a salesman by the number of carloads he can sell a year is fallacious in my judgment.

The amount of work that a salesman can do depends upon our receipts, the condition of our market and our demand and so forth and his ability to get rid of it. I mean by "receipts" the number of different sales that will have to be made in order to sell the receipts, and whether there is heavy or light receipts in the yards that day and so forth, that cuts some figure. The general market conditions cut a big figure in that question, and on the other hand, whether he has got mixed stuff or straight stuff and so forth. That would cut quite a figure. The number of drafts or the numbers of sales would give me some idea as to the amount of time that had to be devoted to the selling of cattle.

Where we have a load of steers that has three classes of steers in them, or in the sale of them, they require the consideration of three grades, we most always sort ours, and [fol. 1081] yard them separately and sell them separately, make separate sales of them. We sometimes resort cattle into smaller bunches to please the trade, and in that case

it takes a great deal more time than if it were possible to sell them in one lot. If you have a carload of 20 steers and it will have one off-steer, the buyer will bid you with him out at a different price, most always. Sorting, in connection with selling, requires a great deal of skill and in sorting in the exercise of judgment in regard to sorting, you are able to get a better price than if sorting were done indifferently. You can sometimes get a few medium kind of steers right along in a drove of cattle and ordinarily if you take them out you would have to sell them a dollar a hundred less and they go right along with the other drove once in a while and you can get them by without sorting. Other times, our demand is such at times it pays to sort these cattle, it just depends on your demand and what kind of cattle you have and so forth in regard to your sorting and you have to use good common sense and good judgment about that.

Certainly, buyers form certain habits with which we become acquainted. After you trade with a fellow for awhile, you come to know him pretty well and understand his way of trading. That is one of the reasons why it would not [fol. 1082] be to the interest of the owner of cattle to attempt to sell his own cattle on this market. To illustrate how we go about selling cattle, we will take a carload of 18 heavy cattle. In our division Ike Brown is Armour's man, he would come down in the alley and I would take him in on them. He and I would ride into the cattle and I would price them to him and if he wanted them or thought I was pricing them close he would bid me on them, and if he thought I was asking too much on them he would inform me that he would not be any good on them and that I was crazy or asking too much, or something, and we would jockey back and forth, and maybe I would try half a dozen buyers on the cattle, and he might come back after awhile and buy them, or I would sell them to Swift or Wilson or some other buyer. They ask where they come from in the majority of times and how long they have been fed and a good many questions. He might ask my opinion as to what they weigh and what my judgment checks against his own as to their weight. Lots of times we discuss the dressing percentage. Lots of times I will say they will dress 65 or 64 and he will sometimes agree with me and sometimes he would say I was too high on them, and so forth

but that is about the way we trade on them. You have got to be a little careful sometimes in regard to telling them where they come from, and so forth, as they are a little prejudiced about their locations; some parts of the country have good corn, that is, cattle get hard and thick fat from certain sections; other sections their corn is light and chaffy, and they don't get quite so good, and a buyer likes to buy them from the best corn country he can find around.

[fol. 1083] If Mr. Ike Brown after looking at the 18 cattle decided that he did not want them, when he left the pen he would take his bid with him. That is a rule of this trade, it is all off when he rides out of the alley. We trade with one buyer at a time on any one drove of cattle. We might have another buyer looking at some other cattle that this fellow was not looking at, being shown by another salesman. Or sometimes I will show Wilson's man a pen of cattle or two up at this end, showing Armour's man one or two pens up the other way, but usually you get through with one man before you take the other one. In explanation of that, I may say that maybe Wilson has told me that he would be no good on a heavy load of cattle, to show them to everybody I would care to, and then I would halloo at Armour's man to go in and look at this load of heavy cattle.

I usually take a little ride in the morning when I think the receipts are pretty well in, and kind of get an idea of about how many different grades of cattle there are around over the divisions in the stockyards so I will be posted, and I send my other salesmen on the same excursions. If we had a large number of two, three or four head consignments, we would go through the same performance in showing them to Mr. Ike Brown that we do in the case of the 18 head.

Buyers can guess pretty closely on percentage, especially the good, thick corn cattle, they can guess on lots of them [fol. 1084] and can guess within one-half to one per cent of them, anyway. The difference in the value of cattle that look exactly the same to the eye, one dresses 60 and one dresses 63, it will be according to your quality and the cost might not be so great, but the quality might make a difference, I would say, 50 cents to one dollar difference with a three percent dressing difference. I mean in the value of the beef.

I bought steers for a number of years on this market and from my experience as a buyer of cattle, in rather large numbers, I would say that it is easier on the buying side than it is on the selling side, and my reason for that is that a buyer, when he strikes a drove of cattle that he is not very sure of, he will pass them up and not buy them, but a salesman has got to go ahead and sell those and he has got to know the value of them in order to do so. A buyer can pick and choose, but a salesman cannot. A salesman has to be prepared to sell all the classes of cattle that he receives, and he must know and be able to say at the moment what he believes to be the market price of all the receipts he gets in a day and he has got to get rid of them. He cannot leave it to anybody else.

We have several different classes of steers which we sell during the year. In the winter time the majority of our steers are beef ~~or~~ corn fed cattle, and we have the choice [fol. 1085] ones, and medium kinds and common grades, and along in the summer and fall, we have corn fed cows as well as a good many grass fed and stockers and feeders which we have to sell, and these cattle have to be sorted up and classified according to flesh and quality before selling them. The different kinds of good steers, and the difference in them, we get lights, heavies and medium weights, and I guess that would be about the classification, or in other words, we get what we call shippers or house cattle, or city trade cattle, and then some of these good cattle, our special orders, and so forth, which order buyers as well as the packers buy. Upon my examination of cattle in the morning, I must immediately classify them as to the demand that the particular cattle will suit or fit, and I must know in addition to what the quality is, who will probably be the best buyers, and the persons who are the best buyers on one day may be the worst buyers on another. Under all circumstances and at all times, we attempt to get at least a normal fill in cattle before we weigh them. The sales are made on the basis of the weight that goes over the scales, so if the animals are improperly filled, it represents a loss to the owner. Cannot afford to have a drove overfill on you, as it is worse than if they did not fill enough, because a buyer won't buy them if they are overfilled. If cattle seem to be in bad condition and we feel

it would make money for the owner by carrying them over, we do carry them over.

[fol. 1086] Monday will be our next largest day. I haven't any idea as to how many cattle we will receive on next Monday. I could guess at it but that would be as near as I could come to it, and I might be as much as 30 per cent off. You cannot tell anything about it; it is all guess work. Assuming that the National received 25 cars of cattle on next Monday, I cannot tell you anything about it as to whether we will sell them out. I would hope to sell out on Monday but I cannot tell. If I cannot tell whether or not I can sell out 25 cars of cattle on Monday and when I will do it, if at all, it is not possible for a salesman to estimate how many cars he can sell in a year. He is just guessing at it when he makes his estimate. I do not know how many cars any of my salesmen can sell on Monday of next week. I do not know how many they sold last Monday. I do not know how many any of my salesmen sold last Monday. I could tell you the total number of cars that were sold last Monday by the National by looking up the records, but after doing that I would not know how many each salesman sold.

In the case of two firms having salesmen of high standard and good reputation, in the sale of a similar number of cattle, one will be able to sell at the market and sell out early and the other will be required to hold and sell out late, that happens every day here in the yards, and the [fol. 1087] time I sell out depends upon the rapidity with which I can perform my end of the work and the willingness of the buyers to buy. On bad markets buyers deliberately hold back and delay their operations and in the case of heavy runs. They will purposely look at cattle slowly under certain conditions and do a lot of unnecessary talk or anything else to delay their operations. The purpose of that generally is to sound the market and buy them as cheaply as they can and get the fill out of them later in the day. If buyers seem to be operating slowly, we expect them to do a lot of unnecessary and unusual talking, that is one of the evidences of attempting to slow down the trade that we encounter. And they will go back and look at cattle the second time for the same purpose before they leave your

alley, sometimes oftener than that. The methods employed by buyers when they have set about to attempt to buy at lower prices, they lay back and wait and stall and won't bid you until late in the day. That does not mean they are not taking our time looking at the cattle.

You just keep working all day on them, you peddle them out here and there and there will be a lot of them they won't bid you on until right up pretty near time for the market to close, you just have to follow them around and sometimes they go to the house and eat their lunch and you go and drag them out of the office and get them down there and maybe they will bid you and sometimes they won't [fol. 1088] even bid you then. You have to do everything you can to sell out on those bad markets and once in awhile then you cannot get completely sold so you have to hold them over.

You cannot tell next Monday whether you are going to get sold out or not. You cannot tell anything about it until it is over with, because you might have to hold some of your stuff over, you cannot get satisfactory bids on it, and sometimes you have to go over to the owners, they are not satisfied, and you hold over for a day or two, and sometimes three or four; I have held lots of cattle over for three or four days at a time, and even shipped some of them back to the country after working on them for some time and we have also shippers that have forwarded lots of cattle to other markets out of here that we have worked on two or three days.

Ten cents per hundred pounds on a load of fat cattle would average around $25.00. That would exceed the commission which we charge; the smallest variation in price that we make in trading on the Chicago market is five cents a hundred. That is about half of the commission charge I would imagine. The difference between good and bad selling as to price in the handling of cattle would amount, at the minimum, to more than the entire commission charge, much more. If there is a change in rate at this market which depreciates the service rendered, if there is any depreciation at all, it would have to be more than the entire charge.

[fol. 1089] Considering that the cost figures for our firm as computed by Mr. Mudd indicates that the cost per draft on cattle for the National is $4.09, and that we are per-

mitted to charge only when the drafts exceed three, so that if there are four drafts we would collect 15¢ for that extra service, the cost would be $16.36 for four drafts. It would look to me like it would not be enough to charge 15¢. I would say that aside from the cost figures that the service charge is inadequate to pay us for the services rendered.

I am the largest stockholder of the National Live Stock Commission Company, and can fix my own salary. I do set up a figure. I do not consider that to be what I believe the Government should accept as my worth to the National Commission Company because I feel I could go out and make twice or more than I have set my salary at with another firm if I wanted to go with them. I think there are lots of good men in the yards here that I think are really good men that probably would not fit in our organization the same as they do in their own.

Cross-examination:

There are three owners in our firm. We have 500 shares of stock outstanding. The par value is $60.00 a share. I hold 315 shares, Mr. Supplee holds 125 and Mr. Cruse holds 60. They are fully paid up. I manage the affairs of the company. I advise with the other owners only. On the [fol. 1090] basis that I fix the salaries of the owners, we talk it over with each other and fix them at what we are drawing at the present time. Mr. Miles has been with me for several years. I am not very sure. Somewhere around eight years. He was head buyer for John Morrell & Co. at Ottumwa, Iowa, for 13 years, head cattle buyer. He was in Kansas City with Swift and Henry and came from there to us. He confines his activities to selling the steer cattle entirely and I do the same. I do not know that I sell any more cattle than Mr. Miles does. I superintend the selling of the steers and the odds and ends and I help the boys, even down in the butcher alley, and back and forth, and I expect I sell, yes, I imagine I sell more cattle than he does, but I cannot figure out exactly. We work on the same cattle; he and I work on the same cattle.

We both go into the pens to show them to the same buyers sometimes, and sometimes just one of us. I think he was with Swift and Henry at Kansas City for two years. Mr. Augustine sells stockers and feeders and some odd cattle. He bought for Swift & Co. a year or two. He was up in

Canada for four or five years, and I think he was at a market up there, in Toronto, and then he came back from Toronto, and he was with the Iowa Livestock for two or three years, and I hired him from them. He devotes all his time to selling stockers and feeders and odds and ends, and [fol. 1091] also I keep him in the country some, once in a while when we have soliciting trips to make which we cannot make, we will send Augustine out there. He has to do yarding and general work of all kinds. All the salesmen help with yarding, watering and feeding. Our firm maintains a regular yard force in the cattle division. We have one head yard man in the steer alley, and we have three men in the butcher alley, one with Mr. Crawford as his head alley man and one with Mr. Shorter as his head alley man, and we have a third man when we start to weigh and I let him help us back and forth with the watering until we get to selling stuff and then he stays at the scales and gets the weights, and so forth, and looks after the weighing. That is our alley force, and we get down there of a morning, the salesmen, and start and sort, and I am off and on my horse forty times before the buyers come out, watering and shaping my stock, as well as the other boys. I have all the yard men go to the chutes at six o'clock in the morning, outside of one or two of the alley men and bring over as much stuff as they can, until we get pretty well cleaned up. We sandwich back and forth with our whole bunch. We receive stockers and feeders the year around, more of them at certain seasons of the year than others.

The heavier season is from July until January. I might also add that Mr. Augustine besides selling stockers [fol. 1092] and feeders, buys our stockers and feeders. We do not maintain a separate feeder buyer. We do not have a large stocker and feeder business combined, but we have a very nice business. Mr. Shorter and Mr. Crawford are our butcher salesman. Mr. Shorter has been with us sixteen years, and he had been in Omaha selling stock for eight or nine years before he came to Chicago, and then he worked for Walters and Dunbar for three years selling stock for them, and he has been with us since then.

Mr. Crawford has been here in the yards, close to thirty years. He was with Stafford Brothers when I first knew him close to thirty years ago, and I think he afterwards was with C. E. Harding and Company, and we hired him

from Harding and Company. I imagine he has been with us close to twenty years. I personally help Mr. Augustine sell stockers and feeders. Every day I am with him and help him line up and help him any way I can. I try to keep informed as to the prices of all classes of cattle. Our main buyers of stockers and feeder cattle are our traders, stocker and feeder buyers in the yards. Of course we get some outsiders, but the majority of our stockers and feeders are sold to the traders in that business. We buy our feeders mostly from the traders who deal in stockers and feeders.

There is some material variation in the salaries paid my employed cattle salesmen. The reason is I figure some in the ability and the way of handling the stuff and so forth. [fol. 1093] These men use their own judgment with respect to the prices they ask for the livestock they handle, if they are in doubt and want any help, they come to me and I am always glad to help them any way I can. I am sure that each salesman gets the value for the livestock which he sells. One salesman probably can handle a little more stuff than the other and in some cases one has a little more ability in regard to handling more than the other, and so forth, and can probably please his customers a little better than the other, and you have got to take all those things into consideration, and also the time you have had one, probably he is an old employee, and you have had him a good while, and probably he is a little more trusted than the other, and those things all enter into your difference in salary.

Our four employed cattle salesmen at times, various times, make soliciting trips to the country. No particular one spends more time in the country than the other, unless it would be Mr. Augustine; we can sometimes on light times of the year, spare him a little better than some of the others and that is the reason we use him in the country a little more than we would our regular salesmen. They have a little more to do than he does.

I consider them all good men and pay them according to what I think they are worth to us. I could not answer whether any one of these men at the present time has [fol. 1094] more friends in the country than the others. I might say that one or two of them might have a little more following than the others or something, but as to his friends,

I could not—I feel that they are all very much liked and I don't know. When I hired Mr. Miles I had a good deal of information about him. Everybody that I asked about him and inquired about him recommended him to be a very high class man, and I had known him for years and that is the reason I hired him because he had the business for John Morrell for thirteen years and they were very well pleased with him. Naturally he would have acquaintanceship among the producers of livestock because he had been with Morrell for thirteen years, and he would naturally get acquainted with customers, or his own customers, that he bought the cattle from, and so forth. He dealt directly with the producers of livestock in the country when he bought for Morrell. For that is the way they buy their cattle. He had somewhat of a reputation as a livestock man at the time I hired him. That acquaintance and reputation was not a factor in my hiring him. I hired him for his ability to help me, but I am always glad for any one that I hire to have some trade along, that would always help, of course, but I did not hire him for that purpose. That does not enter as a factor with me in respect to the salary paid, because we have had a very nice business and I have been able to handle it alone until a few years ago my health got bad and I had to have someone to help me. [fol. 1095] I employed him about the time my health failed me. I had a bad operation twelve years ago. I tried to hire two or three other fellows at that time and afterwards hired Mr. Miles. I am not paying him the same salary now that I did when I first hired him. I have cut his salary. I paid him more up until the first of the year, I had to cut all the boys as well as my own.

I do not know how many cattle I personally sold for our firm during the year 1932. I have no way of telling how many Mr. Miles sold. That is true because he and I trade together there and he might sell one load of cattle and I would sell three over there, and he would sell over this and I would sell four or five over there in the course of a day, and the next day he will sell four or five and me one or two. I have no way of figuring that out. And that is true in respect to all our salesmen.

I could not state for the record the relative capacity for selling livestock of our different salesmen, I could not get anywhere close to it. It would be just a guess. To some

extent, their capacity for handling livestock is a factor in the salary I pay them. If they can handle more than some others on larger runs, that would cut some figure. Our cattle come from one section more than another, chiefly from the corn belt would come the majority. That would [fol. 1096] comprise the states of Michigan, Indiana, Illinois, Iowa, Kansas, Nebraska, Missouri and some from Ohio. Wisconsin and Minnesota I neglected to mention. Sometimes we receive consignments from one owner consisting of a number of cars. They may come from various points. We get lots of meal fed cattle from Texas, in fact, next Monday I will have some meal fed from Texas if nothing happens and I have got cattle coming next Monday from Colorado, southwestern, from way over the slope in Colorado. The owner has advised me that he is sending them. We will receive two loads from the Holly Sugar Company from Colorado, and I might also state that last Monday I had seven loads from Greeley, Colorado. Mr. Hays McFarland of Texas has about five hundred head. I don't know what he will ship. He wrote and wanted me to tell him what I thought about him having cattle here Monday and I wrote and said I thought it would be all right. He will ship probably three or four or five loads at a clip. That's probably the way he would ship them from down there; and Mr. Bert Carpenter that I just told you about a little bit ago, he and his son will ship about three loads apiece at a time when they start out shipping them, and we get several of those kinds of bunches along from now on. Clinton County, Missouri, will let loose a little later on and ship us three or four or five loads apiece, the neighbors do through that part of the country. It is a common practice for our customers to communicate with us in regard to the [fol. 1097] time of shipment of their livestock. They write us along as a rule some time in advance and we keep in close touch with them and they usually notify us about when they expect to come. As a usual thing they advise us about how many they are going to ship. About half our receipts next Monday, or maybe more, we will have advice on, and probably the rest of them we won't. Quite a good many of our customers are rather large feeders. These fellows that feed very large numbers, they will cut out three, four or five loads and let them come in at a time, because they don't like to disturb, if they have got say, five

hundred cattle in the feed lot, they don't like to disturb them too often. They get a little uneasy when you go to shipping them out, and they don't do quite so well. When they do start, they like to get them in fairly decent order as soon as possible. Part of the shippers await our advice in regard to shipping and part of them don't. Part of them will come on without advising you and others will wait for your advice. You cannot always tell about that. It is hard to figure out. In some territories the customer of the commission firm will tell his commission firm how many cattle he has on feed. And that they are about ready or ready for market. In lots of cases they ask the commission men to advise when to market them, but then some of those fellows will just take a chance and say "I am out of [fol. 1098] feed and I have not got time to talk, and so forth, and I will just load them and let them go."

Our receipts consist mostly of steers. We have what we would call a fair butcher trade, but I guess it will run mostly to steers, yearlings and steers. When I speak of yearlings I mean 700 to 1000-pound cattle, year old, and under, they feed lots of baby beeves nowadays, and that is what we call baby beef.

I am in the steer alley all the time, and in case Mr. Shorter gets in a couple three loads of these little light yearlings, I send the light yearlings weighing 800 and less to the butcher alley to Mr. Crawford and Mr. Shorter and in case they get bid on a drove and not sure whether they should sell them or not, they will call me lots of times and I go down and we will look through them, as we figure that two heads are better than one, and we work back and forth that way. The majority of our receipts from Missouri consist of fat steers. The Texas cattle are marketed at Chicago, the meal feds from July on, the next thirty to sixty days, the majority of them. They feed them through the winter and get them ready. There are a good many of those to come now. We have had several letters from several big outfits. The majority of feeders in Missouri, the best of them, the large feeders, start them on feed around the first of the year, feed them on grass and get them ready [fol. 1099] for about August, September, October and November. That is when we get the majority of our Missouri corn fed cattle. Of course, we get a limited number all along throughout the season, but that is our heavy time for Missouri stuff.

It is more difficult to sell a good load of fat steers on the Chicago market now than it was a few years ago. And it is more difficult to sell any kind now than it was years ago because we have not got the demand we had years ago. Things have changed since you and I were boys. That change has come along gradually. It has changed considerably since war time. I do not know hardly how to account for it. Of course these hard times have raised cain with lots of people. Lots of farmers, they are in awful shape, these farmers are losing their farms, just one after another, and these feeders have gone broke. There doesn't seem to be the demand for the meat that there used to be, but it seems to be coming back the last six months; we are beginning to get back again and everybody is feeling better now and you don't hear the complaints that you did. That condition gives us less stuff to sell and it is harder work to sell it. We had a pretty mean old trade up until about five or six months ago. It has begun to pick up.

Q. Do you recall the largest number of cars of Texas cattle that you personally sold during the year 1932 on any one day?

A. I do not, Mr. Dagger. I could not *g*ell you without looking the records up on that.

[fol. 1100] Q. I believe you stated that you could not even determine from your records?

A. I would not know whether, what I sold or anything as we are all there together selling cattle.

The volume that a salesman could sell might be a factor in his efficiency and his profitableness to me as a salesman to some extent. If he did not have a good business and we were hiring him for his business, it would be, but with us we have a nice business, and if you refer to Mr. Miles, I hired him to help tend to the business we had. I hired him to help handle the volume we had. To some extent volume must be a factor in his efficiency; you want a man that can handle some volume, some business, is broad enough to do some business. I hire our salesmen for the year, and our yardmen are hired by the month, and can discharge the yardmen at any time by giving them 30 days' notice. You haven't the least idea when you start the year what will come to you during the year. I do not know now whether we will get one car or fifty cars Monday; there is nothing certain about this business. You are just guess-

ing at it, you have to take a chance, and you have to keep your gang for fear you do get a good run, you have to have them on hand to handle this stuff when it comes. Based upon past experience that I have had in the business I feel pretty confident, in taking that chance, by maintaining this force of employees when I start out at the beginning of the year. You have to take a chance on it; we just, [fol. 1101] by past experience, figure that you can go along for another year and take a chance. That is what you have to do. A man's past experience in this business will help to some extent; we may look back and see a lot of things that we might have done that we didn't do. For a number of years we led the other firms in volume and I think for a year or two it was nip and tuck between us and John Clay; that is the old line companies, and I think we were second, probably last year. I would say for fifteen to twenty years, we have ranked either first, second or third. When we start the first of the year we just have to make a guess at what the next year's business will be, because we are not sure, but are in hopes that it will be as good or close to as good as the year before, but it is merely guess work.

I can give you a little example of why one salesman might sell out early while another salesman might sell out late. Take last Wednesday we had a fair run of cattle up in our alley and we had pretty good class of cattle. We got ahold of Swift's man who buys shippers and sold him several loads of our best shippers and we didn't happen to have many of the other grades of cattle that day, and we got out in pretty good shape. Now, if we had had a run of medium kind of good cattle that would not do for this one party, we would have been all day and probably held some of them over that night without getting them sold, but it varies that way. Now, maybe the next day [fol. 1102] somebody else would have that class of cattle and we would have the other kind and that varies that way.

The rule is to try to sell out the day they arrive, if they get in in seasonable time and your market is so you can. That is, the shipper's idea is to have them sold the day he intends them for the market. The time of day that a salesman sells his livestock does not have anything particular to do with the number of head he can sell, sometimes he has a good market and he can sell it fairly early and other times he has to peddle all day on them.

If I would reduce my force, I am afraid I could not give the patrons as good service as I have been giving. Because, our customers are used to having plenty of yard help, and plenty of help of all description; and whenever you reduce your force, you lessen your service, you just cannot give them the service. That is all, because you have to, they require more service than what you can give them with the force. Now, I have cut my yard help just as low as I can get it, but there are peak days when we have to put on extra help and so forth, and our extra help is not as good as our help that we keep regularly. They are not as reliable. If our service should happen to be impaired in any way, the shippers would probably sell their cattle to John Morrell and to those little packers all over the country; and some of them would ship to some other [fol. 1103] firm that would give them service. They want service nowadays and they don't kick on it if you give it to them, but they do kick if they don't get service. Under any circumstances, the personnel of our firm would make one strenuous effort to give the service. I have always tried to give them the best service I possibly could, and in the cases where we have seen fit to drop a yardman, our yard force has come right up to the mark, and we salesmen get out and help, bring stuff over and water it.

I will say that I am sure that I can go and get twice my salary in more than one firm on the yards, if I cared to, but I would rather run my own business. I could have gone with different firms at that or more money if I had wanted to in the commission business. He would probably figure on my managing his business and selling cattle or something that way, and he might consider all my acquaintanceship and following that I have. No doubt but what it would be of some value; if a man has been in the commission business here for 35 years like I have and would not have friends, he wouldn't be worth shooting. If you are hiring a salesman for his trade that would be a consideration, but if you are hiring him to handle your business and for ability, it is different. I could hire a salesman for both. You can marry a girl that has got money and love her just as well as to marry a poor one too. As to whether I ordi- [fol. 1104] narily figure that out that love is blind they say, and some of these cattle salesmen may be, I don't know.

As to whether I think our firm could handle more live-

stock with the same force it has now if it received it, if we could get it strung out and get it to come more evenly distributed, we no doubt could. I do not know what our peak day on cattle receipts was in 1932. There have been several days that we could not have sold more had we received more than we did. I have not any specific day in mind now. In 1932, I think I remember one day in the fall of the year when the packers came out and bought about half the crop and went to the house and left all of us with half the stuff over, and I think we had several days along there for a while that they did not near clean up.

Q. What is the least performance you would expect of one of your cattle salesmen and still keep him on the payroll as far as volume handled is concerned?

A. That is so uncertain, Mr. Dagger. Some days you would only have just a lot or two, and other days you would have a pretty liberal run. There is no way of telling that. You cannot fire a fellow because we happen to be light for a day or two or week. The next week we might be heavy again.

Q. Taking it for a year?

A. I would not know about that. There are five of us who sell our cattle.

[fol. 1105] Q. The employment of a cattle salesman or any salesmen is a business proposition, is it not?

A. Sir?

Q. The employment of a salesman by a firm which is actively engaged in business is a business proposition is it not?

A. Yes, sir, it is.

Q. Do you think there is any comparison in the employment of a salesman, and the fellow who marries a girl for money and love both?

A. I never got the girl with money.

Q. I believe you used that comparison a moment ago, did you not?

A. Yes, sir.

Q. I am interested to know whether in your opinion there is a similarity in the two transactions?

A. Well, I would think that there was a little difference between them. I would rather have the girl with money, I think.

Q. In other words, you put it on a business basis?

A. I told you in hiring a cattle man, it was a business basis, didn't I?

Redirect examination:

It is not possible nor practicable to adjust our general expenses to meet seasonal or monthly changes in commissions. It cannot be done. You have to hire the majority of your help by the year.

[fol. 1106] Mr. Frank R. Supplee, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago and am vice-president of the National Live Stock Commission Company, and one of the stockholders. I have charge of the hog department for the firm. I came to the stockyards a boy fifteen years of age, and am now sixty-two years old. I was first employed in the packing house of the old Hutchinson Packing Company and from there I went over to the hog department in the yards, where I worked, for about a year, and then I went to Omaha with the Armour and Cudahy Packing Company when they were organized, and went out there to do business in 1887, worked for them three years; then I quit and went to speculating for myself in the hog yards for a period of about five years, and then I came to work in the Chicago yards again in the latter part of 1895 or the forepart of 1896, and have been selling hogs actively in the yards ever since 1896 up to now. I was first employed by the National Live Stock Commission Company in 1905 as hog salesman and have continued in that capacity since that time. I took charge of the hog division in 1922 or 1923.

We could not have handled the business of the National Live Stock Commission Company with a smaller sales force than we had employed in rendering that service in 1932. I do not think we had more yardmen than the circumstances [fol. 1107] justified. If we had had more hogs to sell I would have had to handle them. It would be pretty hard for me to answer the question or be able to estimate the number that we could have handled in the light of what happened in 1932 over what we did handle. I cannot remember

what happened in 1932. I have trouble enough day by day up there selling this stuff. I try to forget it when I go out of the yards at night; do not know whether I could have sold more or not or what would have happened.

MR. E. G. FULKERSON, a witness called by the Respondents returned to the stand and testified as follows:

Cross-examination:

I don't think I would favor a rate on the Chicago market that would keep all the firms on the market in business on a profitable basis, regardless of how small the volume of business handled, but I would say that there is no small firm, unless it is making a living or expects to make a living, is long going to stay there when it gets to that point. I might also add that the large ones will be the same way. In fact, when it gets to a point where I cannot make money in the commission business, I am going to quit. The only factors that I know of that would determine that is whether it ever gets to a point where we run along in the red and it looks like we are going to stay that way very long. I am not going to dig up good money for bad money. I can go [fol. 1108] into other business and beat it, if it gets to that point. I might also add that I have been looking ahead with that object in view, too, if they do cut us. As bad as the farms are, I have got three of them, and I think I can make a living on the farm. I think there would be a few of what might be called one man firms operating on the Chicago market. I could not answer with regard to what a profitable volume of business would be for a one man firm. I don't know what these smaller firms consider and I would not know. I would not think they could do a very profitable business on fifty cars a year. I have no idea what would be a profitable volume, I could just judge by our own business, the only way I would have of judging anything of that kind, and we would not get very far on fifty cars. Either fifty cars per firm or fifty cars per salesman.

I could not answer as to what would be a profitable business per man for our firm because so many things depend on any one man with a firm like ours. He might claim that he has a certain amount of trade and maybe the ship-

pers are shipping there on account of me or account of Mr. Supplee or someone else handling the stuff for him, and the same way goes with the different ones that way, there would be no way to estimate that, I would not think. I would expect our salesmen to sell whatever they got and I could not make an estimate of that, I would not know. In [fol. 1109] the course of a year I would expect him to sell what we got. We are making a continuous effort to increase our business, certainly. I was away from the yards during my illness, I have had three operations. The last time I was away for two and one-half months, something like that I imagine. That was about ten years ago when I was away for three months. The last operation I had was three or four years ago.

Mr. William G. McClelland, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago, and am a stockholder and a member of H. D. Copeland & Company. Am the secretary of the corporation and hog salesman. I came here forty-four years ago as a yardman and was here some two and a half years when I began selling hogs. Have been selling hogs for about forty-one and one-half years. Have been with H. D. Copeland and Company eleven years the first of July. I sell hogs in the Northwest division and Mr. Snyder handles the hogs as a salesman in the Burlington division. I have one man helping me in the Northwest division. He does not sell hogs, he is a yardman.

Cross-examination:

I don't know how many hogs I can handle in a day. I try to handle all I get, but some days I fail at that. I don't know what percentage of the hogs received by our firm are handled by me and what percentage are sold by Mr. [fol. 1110] Snyder. I think I sell a few more than he does. He sells rail hogs—he sells all kinds and I sell all kinds. Mr. Snyder has been with the firm since 1923. He was selling hogs for John Clay before he came with us. I don't know for how long.

There is nothing peculiar about the truck business that makes it more difficult to handle than the rail business, except so many owners and different trucks, that we have got to keep, we are obliged to keep them separate.

MR. W. J. O'FLYNN, a witness called by the Respondents testified as follows:

Direct examination:

I live at 5135 Blackstone; am a cattle salesman. I first went to work as a yardman in Kansas City for Morris & Company, and then Morris hired me to buy cows. I bought cows for Morris and Company from 1906 to 1913. I came to Chicago then and took out a membership in the Traders Exchange and I traded here for a while and when the opportunity looked pretty good to buy some cattle in the Northwest I went to Montana. I came back to Chicago in 1918 and went to work selling butcher stuff for Alexander, Conover and Martin. Stayed with them until about 1921 [fol. 1111] or 1922. Then I went to the Central Live Stock and stayed there for about three years. I left the Central and went to the Nixon Livestock and stayed there until 1929. Since that time, I have been associated with Rice Brothers. For Rice Brothers I sell steers and the yearlings and heifers.

R. H. Green, Harvey Hallett and Charles Rice sell steers and yearlings. I solicit business in the country, cattle, hogs and sheep.

I have been soliciting in the country lately. In Montana and Wyoming, and parts of Dakotas. I started on June 13th and returned here July 15th. I would say that I spent 95 per cent of my time in Montana, practically all of the state. I traveled by automobile. While on this trip I observed solicitors from the Sioux City stock yards and the St. Paul Stock Yards, working for the stock yards companies. I did not see any commission men from those markets on this trip. I made a soliciting trip early this spring and solicited mostly in Pottawatamie County, Iowa. It was about two weeks.

I did not run across a Chicago solicitor on the Montana trip. I believe that the solicitation done by the St. Paul

and Sioux City yard companies attract business away from Chicago to a considerable extent. If the Chicago sommission men want to stay in business, I believe it is imperative that live stock commission firms at Chicago solicit extensively in the state I have mentioned. I think it equally [fol. 1112] difficult to sell butcher stuff or buy it. It takes more time to sell them.

Cross-examination:

I work on a commission basis. When I went to Rice Brothers I had some following. It was on the basis of that following that I was employed by Rice Brothers.

It would take twenty to twenty-five minutes to sort twenty head into four bunches. When cattle come from the Montana range country they would not be fairly uniform. In order to tell you into how many sorts a carlot of 20 head coming from the interior of Montana require, it would depend upon the kind and the weight they are. If approximately one weight coming from one owner, if I were to tell you how long it would take to sort the load of cattle, first, into how many bunches I would think they would have to be sorted; I don't know. I would have to see the cattle first. You have got to sort the cattle to the trend of the market. It may be necessary that it would not be necessary to sort them at all, and it may be you would have to sort them. I could not answer the question in what percentage of cases would require no sorting at all. I could not answer the question as to whether it would be one-half or one-quarter. I could not even make an approximation. I don't want to guess.

Cross-examination:

Q. Mr. O'Flynn, can you tell us the greatest number of carlots or the greatest number of head of cattle that you have sold any day this calendar year of 1933?

[fol. 1113] A. I could not.

Q. Could you approximate it?

A. Do you want me to guess it?

Q. No estimate it.

A. I could not even estimate it.

Redirect examination:

If a carload of cattle comes from Pottawattamie County consigned to Rice it would be my business. I could not determine how long it would take to sell it. I do not know what kind of a market they would strike. It may take but fifteen minutes and it may take all day. I have sat out there with cattle until quarter to three without bids on them. I do not think it is a proper question to ask. I do not think it may be answered correctly. I don't believe I could even make a close guess at it.

Q. What kind of solicitors would you meet? You mentioned the Stockyards Company. Do you meet anyone else or is that business solicited by anyone else?

A. Well, to explain it exactly, the St. Paul market have what is known as residence solicitors in St. Paul. They stay there all the year round, and, during, especially during the shipping season, they get from the different terminals or dispatchers the number of cars that are going to be loaded at a certain point on a certain day, and all these solicitors representing the St. Paul market and the Sioux City market and the St. Paul commission companies and some of them at Sioux City, mostly St. Paul, will be there before the cattle get in. And there are sometimes that I run into eight or ten solicitors up there and only one Chicago man. Competition is keen. They use everything [fol. 1114] humanly possible to defeat Chicago. They tell them what rotten hay we feed them down here and filthy water that is no good to drink, and they tell them it costs about fifty cents a hundred more to run them from St. Paul to Chicago, when it only costs about twenty cents a hundred more, they tell them that the shrink from St. Paul to Chicago is enormous when it hardly isn't anything, they tell them everything they can and sometimes stretch the point a little bit about the truth, and when you go up there to get business in Montana, you have a battle on your hands to drag them by St. Paul or Sioux City.

Q. Any other circumstances you have noticed?

A. I noticed there two years ago next month I was out to a place called Spear Siding. It is five miles either way in Wyoming or Montana, I have forgotten which, but it is located near a town called Lodge Grass. It is right off the Crow Reservation and we heard about these cattle going to

go out and I told my guide that I believed I would go over there tonight and see if I can land this shipment to Chicago. We trailed back in there up the creek and finally found where they were camping for the night, and I looked in there and says to a fellow, "How many cars are they shipping out of here tomorrow?" He said, "about eight." I says, "Who are all these fellows around here?" And he says, "That fellow over there is a St. Paul stockyard man and that fellow over there is a Sioux City stockyard man and this fellow here is a solicitor for a St. Paul house," and he went on, and I guess he must have named ten of them there and I was the only Chicago man.

(Record closed. Record opened.)

The witness (continuing): So, I figured my chances of getting any business out there was against me because they were a stone wall in front of these shippers all about Chicago and I didn't figure honestly that it would pay me to stay there and try to penetrate that stone wall, because it would be too tough for me, so I just pulled up camp and left.

Q. You cite that as an instance of the necessity for solicitation by commission men in the business at Chicago to [fol. 1115] prevent the business from going to some other market for sale?

A. Absolutely.

Q. Can you cite any other instance?

A. Well, the day before that, I was up in the Cheyenne Reservation and they were loading some cattle at a place called Lame Deer or close to Lame Deer, and I ran into about the same circumstance up there as at Spear Siding. So, I figured that the solicitors for both the commission men and the Stockyard Company were too thick for me and I moved north further. Lame Deer is the headquarters of the Cheyenne Reservation. These here were resident solicitors which are not permitted by the Chicago Exchange at all. We are only allowed to have two men on the road at one time and these resident solicitors stay up there all the year round, soliciting for St. Paul, and I don't know about Sioux City but I am positive about St. Paul, and if we don't go up there and combat them, our chances for business here would be pretty slim. You would hardly make your expenses on your trip.

MR. WILLIAM G. MCCLELLAND, a witness, called by the Respondents was recalled to the stand and testified as follows:

Redirect examination:

I had three double deck cars off the trains and one hundred seventy-five truck hogs today in our alley to sell. I think those hogs arrived in five trucks. I had two big trucks today. There were eight or ten ownerships in the 175 head. I sold the three double decks and the one hundred seventy-five truck hogs. The market was fifteen cents lower today. None of the double decks were plural ownership consignments.

[fol. 1116] Q. Mr. McClelland, during the month of January, 1932, according to the work sheets, Exhibit 16, for H. D. Copeland and Company, during the month of January, you sold hogs arriving in straight cars, single ownership, 4,608 head; during the same month you sold in mixed car No. 2 or from mixed cars No. 2 which includes cattle, calves, hogs or sheep, or any of those species except calves, 250 head of hogs; during the same month you sold 2,007 head of truck hogs, and during that same month you sold 376 head for speculators; in other words, the truck business was almost half as much as your single ownership rail business; and during the month of February in straight cars, single ownership, you had 2,754 head by rail; from mixed cars, single ownership, you had 223 head, and for trucks you had 2,467 head, speculators, 213 head.

A. Is that this year or 1932?

Q. 1932.

A. 1932.

Q. So that during the month of February, you had very nearly the same number of head arriving by rail as arrived by truck. During the month of March you had 3,593 head arriving by rail in straight cars, single ownership; during that same month you received thirty-one hogs——

A. Thirty-one hogs?

Q. In mixed cars.

A. Oh, I thought you were going to say trucks.

Q. And from trucks you received 1,277 head, or nearly three times as many by rail as by truck; and during that same month you sold 55 head for traders; during the

month of December of that year you had 1,019 head, single ownership, by rail, in straight cars; you had 68 head in mixed cars, single ownership; you had 1,900 head in trucks, and 114 head sold for speculators. Now with that wide disparity of trucks to carloads, mixed carloads and speculators, do you believe that it is possible for you to say that you could consider the days as you found them, taking fast markets and slow markets, and the work just exactly as you did it, or would it be necessary to know in answering such a question the variations that are brought about by the question that I have just asked which indicated to you the differences that occur from month to month; do you [fol. 1117] think it possible to say how much you could do?

A. The only way I can answer that is to say there are no two days alike.

Q. The figures indicate that the month's business varied very materially?

A. Yes, sir.

Q. Now, with reference to the drafts in those consignments, by referring to this sheet you will see that they vary to the same extent, in other words, to handle 1,277 head by truck in the month of March, you sold them in 211 drafts; to sell 3,593 head in March by rail, you had 146 drafts; so that you sold nearly three times as many hogs with half as many drafts?

A. That is very possible. That is what the records show, there is not any other answer to it.

Q. During the month of December you sold, as I indicated before, 1,019 head in 36 drafts by rail, straight car single ownership, and during the same month you sold 1,900 truck hogs with 253 drafts, which indicates another condition brought about by a difference in the mode of arrival.

A. That is right.

Q. Now, during the same month, or during the same year, the record shows in the case of mixed carloads No. 2, which contained all kinds of animals, that during the month of January you had seven single deck cars, you had 74 head of cattle, six calves, 250 hogs, and 153 sheep; during the month of May you had 149 cattle, 113 calves, 1,063 hogs, and 24 sheep, an entirely different type of mixture. Now, would it be possible for you from memory to be able to indicate in response to any question what those mixtures were during the various months of the year 1932?

A. No, that would be impossible.

[fol. 1118] Q. Sir?

A. That would be impossible.

Q. Are you able to carry them in your head now and remember what they were from the time I just read them to you until the moment.

A. No sir, I could not do that.

Q. Now, if it is not possible to carry it so short a time, how could you figure that you would be able to indicate the number of cars of hogs that you could sell when the question of the mixtures and the parcels is only one of the elements that you have to take into consideration to begin to approximate an answer to such a question.

A. I have not figured it.

Q. Sir?

A. You asked me how I figured it, and I have not figured it, I can't.

Q. You think such a question would be hopeless for you to answer?

A. Yes, sir, I do.

Q. Do you believe anybody can answer such a question?

A. I don't think they can.

Q. And do you think because somebody else answered a question that that ought to be or furnish the basis as to whether or not it can be truthfully answered, and upon which the Secretary should base a finding or an opinion?

A. Please read that.

(Whereupon the question was read.)

A. I cannot truthfully answer it. I don't know what the other fellow has answered or can answer.

[fol. 1119] Q. So that the mixtures, the differences in the business that occur, occur because the farmers in preparing their shipments for market and in forwarding them to you, choose to forward them, or must forward them at the time they are ready to market, or the time they want them marketed and in the parcels they must ship them?

A. Yes, sir.

Q. And the things that you have to do in connection with them depend upon how the farmer chooses to ship them to you?

A. I don't just get the meaning.

Q. As to sorting and the handling in the yard?

A. We have to take them just as they come.

Q. And you have no voice in the matter whatever?

A. No, sir.

Q. And as to whether or not the shipper will ship his hogs, that has a certain number of hogs to ship, will ship them in April or May, does not depend on anything you may do except in the instances where you advise them to hold for a short time or to forward somewhat sooner?

A. He usually uses his own judgment. They write to us and sometimes we advise them to hold a week or so.

Q. Now, in previous cases of this kind, Mr. McClelland, the Secretary, by some process, has determined that a certain standard of performance is necessary or should be required of hog salesmen, and they relate that in terms of cars per year, and then they find out how much annually a salesman ought to receive, and they divide that number of cars which they reach arbitrarily into the number of dollars which he should receive and thereby they find the cost of salesmanship, the reasonable cost of salesmanship. From your forty years' experience selling hogs in this stockyards, can you imagine, or do you believe that such a process is in any wise practicable or should be used, based upon the knowledge you had and received from the selling of hogs on the Chicago market?

A. I do not.

[fol. 1120] Q. What is wrong with it?

A. Well, I don't know why the Government should know what I am worth to my firm or what my salary should be. Different men have different ability, don't they?

Q. Yes. Now, with respect to the number of animals that you sell, the carloads that you may sell in a year, what have you to say about that? Let us assume they decide that based upon some evidence or theory that you should sell 1,200 carloads a year, in order to prove that you are an efficient hog man and efficient from the standpoint of a salesman on this market, what would you say about that figure?

A. I could not answer that only this way: I happen to know that in 1923, I sold over 2,900 cars of hogs, and I don't think we get 1,000 cars now for two of us to sell, and I think I am worth just as much as a salesman now as I was then.

Q. You work just as hard?

A. I work harder.

Q. 1923 is the year they fixed the rate and said the charge that you now make was reasonable?

A. I don't know.

Q. Assume that that is true, that the Government then made the rate that you now charge, do you believe that anything has transpired since 1923 in the sale of hogs that makes your service worth less to the man that buys your service than it is today?

A. I don't know what it would be.

Q. Do you believe that the charge which you make for selling one head or more of hogs by any shipper into this market is more than you believe it worth to the man that pays the bill?

A. I do not.

Mr. Boyd: That is all.

The Witness: Do you know that in handling one hog or one sheep or one calf, it goes through the hands of four or five of our men, yardmen, salesmen, bookkeepers, bill clerk, a letter to write and a postage stamp for selling one sheep or one hog?

[fol. 1121] Mr. Boyd: I know that, and I think the Government does, Mr. McClelland, at least they do now. Let us have a couple of minutes recess.

Q. You said that one time back in 1923 you sold 23 carloads I think?

A. Sold 23 carloads?

Q. On some day back in 1923?

A. I didn't say that.

Q. What did you say?

A. I said I sold over 2,900 cars of hogs in that year.

Q. Sold over 2,900 cars of hogs in that year. Do you think it physically possible to sell, for a salesman to sell such a number now, coming as you receive them and as indicated by the information which I read from your record of receipts?

A. I don't think we will receive over a third that many in both cars and trucks now and two men sell them. Perhaps we receive more than a third, but I would not think much more, and we have all we can do. I don't get a vacation any more; I haven't had a vacation in two years and won't get one this year.

Q. So that the amount of business that you did on the large days during the year 1923 represented the maximum amount that you could do with your salesmen during that year?

A. Yes.

Mr. Boyd: That is all.

Cross-examination:

Mr. Boyd quoted the receipts for me for January, February and March of last year. My time was fully occupied last year in selling hogs; practically all. I could have handled more hogs if our firm had received them in [fol. 1122] 1932.

Recross-examination:

If a firm hired a salesman and had only twenty-five cars of hogs in a year's time, I would think he would have to work much cheaper than the man who sold more, but I do not know why the rate should be different. It is evident that if a salesman handles only fifty cars of hogs in a year, the firm would not be able to pay him as much. I would say that the bigger the volume the salesman handles, the bigger salary the firm could afford to pay him. I don't think that a good salesman could afford to work for a salary that a firm could afford to pay that salesman on fifty cars of business, but some men have to work for less than they can afford to and they cannot help themselves. Under those circumstances I think it would be possible to fix a rate that would maintain all firms in business on this market. In years past the rate has given most of the commission firms a living. If a firm received only five cars of hogs, I cannot imagine a firm only receiving five cars of hogs—I wouldn't call them a commission firm. I don't know at what volume a firm could afford to hire a salesman; I don't know anything about different firms' expenses, how many salesmen they have. The only firm I have worried about is H. D. Copeland.

[fol. 1123] I don't think another firm could support a salesman on five cars of business a year.

MR. FRANK R. MULLEN, a witness, called by the Respondents, testified as follows:

Direct examination:

I live at 6718 Paxton Avenue in Chicago and have been associated with the livestock industry in the stockyards for about 32 years. I was raised on a farm and bought and shipped livestock, and all my experience in the commission business has been on the Chicago stockyards.

I started in the commission business as a yardman, and worked at that for about three years. I then started to sell butcher stuff and sold that for ten years, when I started selling steers.

I started my own commission business in 1912. The Mullen Commission Company is individually owned by me. I sell all kinds of cattle, but mostly steers. N. E. Barnes sells hogs and is the only employee I have. In 1932, F. L. Smith sold butcher stuff, R. E. Murphy was my hog salesman, and M. R. Minnick was my bookkeeper. J. L. Farren sells the sheep that are consigned to me. I am clearing my business through Gillogly and Company. I started to clear my business through Gillogly and Company the first of March 1933. I made that change for economical reasons. As to the things that caused me to change my course [fol. 1124] of business it is getting more expensive to keep an office of my own and I either had to get more business or get more pay for it. My receipts since I have changed are running about the same. Gillogly and Company does the office work and yarding for the Mullen Commission Company. We use pens assigned to Gillogly. I sell my own cattle; Mr. Barnes sells the hogs, and Mr. Farren the sheep. Mr. Mullen was temporarily excused.

MR. ROY E. MURPHY, a witness called by the Respondents testified as follows:

Direct examination:

I live at West Burlington, Iowa, and am engaged in farming. I raise livestock for the market. Fatten cattle and hogs. I patronize the Chicago and Peoria markets. I do not ship cattle to Peoria in carload lots. I ship one or two

individual animals to Peoria. I have had about eleven or twelve years' experience in the livestock business. I did for some time breed my own hogs but found that that took personal attention so in the last few years that I have not been able to give it, so I buy my hogs and fatten them. My cattle I buy from the range and fatten, all dry lot feeding. I market my steers at Chicago. I have been bringing top cattle to Chicago. I have had a large number of shipments that have been top cattle on this market. I ship them to one of the commission firms at Chicago. I have had first class service from Chicago commission firms. By [fol. 1125] first class service, I feel that I could start my cattle, my shipment or whatever it might be, to the Chicago market one morning and start the same morning to California myself, and feel that it would be just as well taken care of here by the firm that I ship to as if I were here with it.

I come to Chicago with my cattle as nearly every time as I can. I do not come so much to check up on the commission men as to get what information I can how to make my stuff better. I am always endeavoring to make my livestock a kind that will be most desirable on the market to the packer. I believe I might say that I have been successful in doing that.

I am familiar, in a general way, with the charges made by the livestock commission men at Chicago; I do not know that I can quote it to the penny, but I know about what it costs me per head and per hundred pounds, and I am fairly familiar with the charges per car, and so forth, and I would not swear that I could quote them off-hand. I have never felt that it was unreasonable in any way.

I do not feel that the charges now being made are more than the service rendered is worth to me. On the average, I have had from two to four or five carloads a year. I feel that the charge I have paid has not been more than the service was worth to me.

[fol. 1126] Cross-examination:

The cattle I ship to Peoria would be cut-outs, what we say tail enders, and which happen to be what the truckman calls the pickup loads. I ship to Peoria by truck and to Chicago by train. I ship to Peoria because we seem to get a very good market there and I can ship in less than carload lots

more conveniently than I can to Chicago. I don't believe it would be to my advantage to ship less than carload lots to Chicago. Not having shipped less than carload lots, I would not have a comparative cost on the two markets in less than carload lots to Peoria and Chicago markets.

The commission men at Peoria render me very good service. I think as good as I get in Chicago. I have not had the experience there that I have here, or had the opportunity. I suppose the oftener you ship to a place, the greater your opportunity to find men off their feet and not giving quite as good service sometimes, but their service there has been quite satisfactory. I ship yearly to Chicago from two to five cars of cattle, and I would say in the neighborhood of four hundred head of hogs a year.

I can definitely state that of the cattle I have shipped this year, two of them have been tail-enders that went to Peoria. My first shipment of hogs to Peoria early this [fol. 1127] spring, I believe was twenty-seven head. A little later I had a shipment of twenty head, and there were a few head in a pickup load.

I ship to Rice Brothers at Chicago and I always ship to the same concern. As to what induces me to ship to Rice Brothers in preference to any other firm I have always had service from that firm that I felt was without any flaws, and there used to be an old saying "better a devil you do know than one you do not." I never felt there was cause to change. Receiving what I call first class service from Rice Bros. I rather formed the habit of shipping to them. The commission men from the Chicago yards do not come to my farm to appraise my livestock. When I was going to the American Royal last fall they did. I was confirming or otherwise my judgment of the animals that I thought were fit to go to that show in a carlot class. The commission men from the Chicago stockyards have been at my farm at various times and looked my cattle over, but the visits were as much of a social nature as they were commercial. They did not solicit my business at that time. They have never had to do that. There was one other firm that came there besides Rice Brothers, but I cannot give you their name. I saw the man recently in the yards, and he came up and talked to me, but I could not give you his name. I should [fol. 1128] say that was approximately two years ago. I would not attempt to give you the date exactly.

I have no other line of business except feeding and farming. I do general farming, that means more or less jack of all trades and master of none.

I have a shipment of livestock on the yards today. It consists of thirty head of heifers, shipped in one carlot to Rice Brothers. I followed the shipment through the yards. The cattle were yarded in the pens when I reached the yards. They had been fed. I buy my stockers and feeders from Western Hereford Exchange, Davenport, Iowa. I do not buy any through the Chicago stockyards commission men, for the same reason that I have been shipping to Rice Brothers, I have found the firm I have been dealing with entirely satisfactory, and so long as they give me the quality of feeders that I want and their business methods are entirely satisfactory, I feel no reason to change.

My operations are not financed in any way by any of the commission men on the Chicago yards. I do not borrow money through any commission man. I have testified that I received what I term first class service at the Chicago yards. By first class service I mean, I feel that my stock is always very well taken care of. I have never lost—or had any crippled up, I have sent the same number over [fol. 1129] the scales that I shipped from my farm, my shrink has been very satisfactory in the majority of times. I weigh them myself before I leave home and I also know the weights that go over here, and my shrink has always been satisfactory. I have never had any difficulty in settlements. I have never been here with a shipment that I did not get as much, if not a little more, than I expected to get for it when I left home, so that would just be a few of the things that would make satisfactory service. It is a little hard to define that term.

I should think that it would be true that the crippling of animals occurs through the fault of the railroads at times. That is a matter over which the commission firm has no concern up until the time they unload them; the handling of them from there on to the pens I should think the commission firm is largely responsible for the way it is handled, for instance, coming over a slippery alley, and a slippery pavement, and things like that, it depends on the way they are handled how they get to the pens and over the scales.

Shrinkage is a great many times caused by delay in trans-

portation, I have had very few delays in transportation, however.

As to my knowing in a general way the cost of commission charges per hundred weight as well as by head, I meant to say or would state that this way; I keep very [fol. 1130] accurate account of what it costs to bring the stock in and what it has cost me per hundred pounds and per head. That is just for my information and my future shipments so I can estimate fairly accurately, then, what is going to be my marketing charges.

I have always felt the commission charges were not more than the services were worth to me. As to the basis of my opinion as to what the services are worth to me, if I thought I was being charged excessively, I would have probably started up a little rumpus about it. As to how I determine what the charges are worth to me, as I said, my shrinkage has been entirely satisfactory. The same number of head have gone over the scale. That all means satisfaction in getting as much or a little more than I expected, would put you in a pretty good frame of mind. I think those things all lead to the point of being satisfied with what you pay for a service.

As to differentiating between what it costs me and what it is worth to me, of course, that is more or less flexible as compared with the price you are getting for your livestock. I don't believe you could state it in dollars and cents. It must be more or less a flexible term. As to what factors in my mind should be considered in determining a reasonable rate, when you speak of quality of service of a commission firm, it seems to me that it depends on the temperament and the qualifications of the men who are handling your livestock very largely.

[fol. 1131] Q. What elements or factors will go to make up a reasonable rate for the service performed by the commission men? To clarify that, in your opinion, what is a reasonable charge for selling, only, performed by a commission man? Now, when I use the word "selling" I want you to eliminate yarding, I want you to eliminate the office cost, eliminate business-getting and other factors, and limit your answer for the moment to what is a reasonable charge for the selling only.

Mr. Boyd: Now, Mr. Examiner, I am forced to object.

This gentleman comes here as a patron of the market and is not offered as a cost accountant or as a rate expert. The methods inquired about used by the Government are arbitrary methods used by them. It would be just as improper, it seems to me, to ask a witness for the Interstate Commerce Commission case what he believes should be a division between the Santa Fe and the Wabash on business hauled between two points on a two-line haul. For that reason I object.

Mr. Miles: Now, Mr. Examiner, the witness has testified he thought the rates were reasonable. The counselor has testified that the way the Government fixes the rates is arbitrary and unreasonable. I am trying——

Mr. Boyd: I said what?

Mr. Miles: Arbitrary and unreasonable.

Mr. Boyd: I did not say that.

Mr. Miles: You have testified to it so many times that I may be mistaken this time.

Mr. Boyd: Maybe the witness is as well off learning that. I did not know I had said it to him or in his presence.

Mr. Miles: I say, now, if the witness believes the rates are reasonable, believes they are not unreasonable, it seems to me he must have some well defined idea of what constitutes reasonable rates, what the different factors are that constitute it. If the witness does not have that in mind, it is perfectly agreeable for him to so state.

[fol. 1132] Mr. Boyd: I believe a similar case would be in the case of a franchise for a street car company; a man pays eight cents to ride and he thinks it is worth eight cents to ride, and I suppose in order to support that opinion, he would have to show the operating cost and how much they paid the conductor in order to satisfy them it was worth eight cents.

Mr. Miles: The question is not whether or not the witness is satisfied but what makes a reasonable rate. If the witness wishes to confine his testimony to the statement that the rates are satisfactory to him, that is one thing. If he states the rates are reasonable, that is an entirely different thing. Take the ruling. No further argument.

Mr. Boyd: By government counsel.

The Examiner: Objection overruled, but I will say, Mr. Murphy, that I don't want you or any other witness to testify to anything that he does not know. If you feel that

you can answer the question, you may answer it. If you feel you cannot answer it, you may say so. Read the question.

(Whereupon the question was read.)

The Witness: Well, it is only my personal opinion that you want?

Mr. Miles: That is correct, sir.

A. I mean, you are not asking me to testify as to whether it is reasonable for everybody else to feel that way or not?

Q. That is correct. I want your personal view, and I want to know the basis for that view?

A. I think without going into or referring any further to what I have already stated as to what I considered the reasons for my feeling that the charges are reasonable, if you go to a specialist of any kind and you feel that he is doing the job that you ask him to do, and his charges are not excessive, you are satisfied to pay the price he asks. If it is not, you have the alternative of going some place else, or changing your marketing methods or your patronage methods.

[fol. 1133] Q. You have not yet answered the question. How would you determine that the charges of the specialist are unreasonable or excessive?

A. That is all personal opinion.

Q. Yes, sir, all right. Now have you any personal opinion as to the actual cost of a salesman selling a carlo-d of cattle or a carload of hogs?

A. No, sir, I don't know what his cost of operation may be.

Q. And you do not know the cost of any function performed by the commission men around the stockyards, such as yarding taken alone, business-getting and maintaining taken alone, soliciting taken alone, you do not know the cost of any one of those factors?

A. No, sir, never having used any part of that service any more than just what I have stated in the yards, having been taken care of here,—and you spoke of loan and business soliciting, did you say?

Q. Not loans, but business-getting and maintaining, soliciting?

A. That part of it has never come into my personal connection or personal operation, probably would be a better word.

Redirect examination:

My experience in the marketing and feeding of livestock is that I have been able to make a profit in my operations. I have made a very small profit in feeding cattle during the so-called depression, but it was blue ink instead of red.

Recross-examination:

As to my opinion as to why shippers ship to Chicago yards in preference to other yards, I think the larger the yard, the more competitive buying there is, and they must feel that this is a better market or they would ship to some [fol. 1134] other. The men in my community who have been shipping cattle longer than I have been in the game are still shipping to the Chicago market. I don't know that I could definitely state in detail why, but just the general statement that they must be satisfied with the Chicago market or they would find some other market to ship to. I do not know that it would be an advantage to have a head rate, rather than a carlot basis. It seems to me that that is the same as mass production, that if you could get a lot of them, you can handle them cheaper than you can just a few.

Redirect examination:

I am kept posted as to the markets by my commission man. I consider that service of value to me as a producer. I might state a little further that I never drew the line so finely to know whether that was a personal service or whether everybody got it, but I do appreciate it and I have availed myself of that. I have found it decidedly useful to me.

As to whether I feel that I might be injured by any action on the part of the Government which would limit me in the right to receive that information, you cannot very well speak about the future to what extent it might injure you, but I know that I would miss it. I know that I would much prefer to go on with the information and that branch of the service with that added item than I would without it, and I absolutely feel that if that added to my cost of [fol. 1135] marketing not more than I am now paying that

I would feel that it should not be restricted so far as I am concerned.

I discuss with my commission man what I am about to feed in the coming season. As to the kind of service I seek from the commission man in that connection, it has to do what is being bought generally throughout the country. They always say it is a good idea to buy what the other fellow is not buying, and I think he is in a better position to give me that information than I can get from any place else, any other source, because he has men coming in from all parts of the country, from the range and from the feedlots and all, and he knows about what is coming to market, and about what is going into the feedlots, probably, from the information that he gathers up from these men. I do not know just exactly what his source of information has been but I do know that the firm has always had that information available and having jotted it down from time to time I feel confident to say that their predictions have been fairly close, and that service has decidedly been a part of the things that have contributed to my being able to feed and market livestock profitably.

I will give you my opinion on why I do not sell my hogs at concentration stations to the packers direct without any person representing me as a sales agent. I do not know that this exactly covers your question, but I feel that if a [fol. 1136] man comes to me to sell me corn and my feedlots are full of livestock and my corn cribs are empty, I have a demand there and I will pay a premium price for it. If he comes to me to sell corn and my cribs are full, I am not quite so apt to pay him a premium price for it, and I believe that is just about parallel to the direct buying; if the packers have their pens pretty well filled from these concentration points, I guess that is what you call them, they are not quite so apt to go out and skirmish around and be willing to pay the price for the stock that they would if it came to the competitive market. I mean if their coolers were empty and they were not having them come directly to their pens.

I very decidedly feel that the method of selling on my part would contribute to a condition which will be detrimental to me ultimately as a producer, if the packer is able to buy the large part of the supply, outside of competitive channels. I think that it should be a matter of concern to

any man that raises hogs to keep the marketing of his product on a competitive basis.

Recross-examination:

As to what solution I have for direct marketing, I would say ship it to the terminal market.

I am not familiar enough with our Constitution or law-making apparatus to say whether or not under the Constitution of the United States that any valid act could be passed which would prevent a packer buying direct.

[fol. 1137] As to whether packers pay as much in what has been called direct buying in the country, as the market at Chicago is the same day; stating figures exactly, I could not answer that, but approximately, I think at Burlington they pay within about fifty cents of the Chicago market and it costs me approximately forty-one cents to ship to the Chicago market. So there is an advantage of almost twenty per cent there which they could easily do business on, I should think, and it would be quite an item to the producers; if we could have that twenty per cent on our operations, we would feel pretty good about it. I also feel that if all those cars were coming in here and were sold on a competitive market that that twenty per cent might increase to a good thirty per cent. Well, would it add to the supply or not? I don't believe that can quite be stated, that was the case of hogs marketed direct and on the competitive market making up the total of the day's market, so I do not know what we could quite say that it would add to the number of hogs on the market that day. I have a feeling that the added supply would not tend to reduce prices, if the added supply were shipped to the competitive market. I think that because they would have to get out and bid for them in order to get them. I am not reversing the law of supply and demand. There is no law of supply and demand. I believe there is a principle of supply and demand, but I do not know that we have any law of supply and demand. I recognize [fol. 1138] that the number of hogs on the yards would be increased if direct marketing were abolished, and I also recognize, assuming, no other factor now to be considered, that where the supplies are increased that there is a tendency to reduce the price paid, that is generally true.

In my opinion, the fact that there were added competitors in the market would tend to offset that.

MR. FRANK R. MULLEN, a witness called by the Respondents, was recalled and testified as follows:

Direct examination (continued):

I have done everything I can to reduce my expenses; and brought about the change in my method of doing business for that purpose. Between the years 1931 and 1932, I attempted to reduce and did reduce my expenses. The salaries of non-owners were reduced. The advertising was reduced. The traveling and soliciting were reduced. Rent, light and heat was not substantially reduced. It was not possible to reduce that expense and conduct my business in the way it was conducted. There was a reduction in stationery, printing and supplies, and in telephone and telegraph.

My total expenses were $31,484.16 for 1931, and $26,326.07 for 1932. On the first of this March I found that I was not making a satisfactory showing and therefore made [fol. 1139] the change. I am still soliciting my business as before in the country. I send out circulars regularly, sometimes once a week, sometimes twice, and som-times three times a week to different classes of customers. It is my opinion that that method is necessary to be employed in the handling of my business. I also do traveling.

My business has been coming from Central Iowa. My hog business that has been coming from Central Iowa, most of it is now sold direct. Recently there have been a great many cattle sold in Central Iowa direct to packers.

I still get what cattle my customers ship to Chicago. I am very often able on these soliciting trips to persuade the farmer that he would be better off by shipping his livestock to me, and in that way prevent some of the business from going direct to the packers. Shippers ask me what cattle will bring on the Chicago market, and they tell me what they have been bid at home. If it is profitable they come to Chicago with it, and I have found that based upon the bids made where shipments have been made to me that the shipment of cattle to me has proved profitable to the owner of the cattle. I have not found the reverse condition to be true after I saw the cattle and told them what they would bring.

[fol. 1140] Cross-examination:

I told you I am cleared by Mr. Gillogly, and that began in the present year of 1933. In 1932 I cleared a firm, Benton & Company, and Benton & Company's business is handled at the present time through Gillogly and Company. We both went over to Gillogly at the same time. My going over to Gillogly was a matter of necessity if I wanted to make any money. That was through because not enough business; lack of volume. Yes, it is my ambition to get a sufficient volume of business so that again I may do business on my own as I heretofore have done. In making soliciting trips in the country, I spend three days on a trip. I could not say how often I make those trips without looking at the books. There are some weeks I do not go out, and there are other weeks I will go out for three days a week. It is impossible for me to get away a great many times and that determines whether I shall or shall not go out in the country on a particular week soliciting. That is because there will be cattle coming that I know of. At other times I feel very safe in leaving Wednesday night and coming back Sunday.

I travel by both train and auto. I go to close-by territory, Illinois, and probably eastern Iowa. The farthest point I go will probably be Des Moines, Iowa. I would make that by automobile. If I were going to make a trip to Des Moines this week I would leave at 10 o'clock tonight and would reach Des Moines at seven in the morning. I [fol. 1141] would not begin soliciting immediately. I would have to get to where the cattle were before I started soliciting, probably 15 miles. I would get there about eight-thirty or nine o'clock and then begin the routine of calling on various people that I think might ship to me. I would solicit shippers if I knew they had been solicited by other commission men, and I presume they do the same to my shippers.

I suppose if I had a hundred and fifty loads a month, it would be ample to get back on my own and reestablish my own firm. As to how many I believe I would be able to handle without employing another salesman; there are two or three different classes of cattle that come into the market. If you are selling all your cattle and you should happen to get a big run of butcher stuff, that would require all your

attention, if you had a run of steers on the same day, you would not be able to give one or the other enough attention, you would have to have some help. Yes, I said if I had 150 loads a month I would feel justified in starting back into business on my own. I did not have any class or kind of cattle in mind; just taking them as they come. Now taking them as they come, it would all depend on the kinds of cattle I have, about how many I would feel I could handle before I would want or need to employ another salesman. If my week's supplies come in one day, I would have to have plenty of help.

[fol. 1142] Q. If they came to you as they did come, when you were in business for yourself, would you need any help?

Mr. Boyd: I object to the question unless the witness is told how they come, or asked if he knows how they came. I submit by examination of the work sheets——

Mr. Miles: I insist that the witness——

Mr. Boyd: —so the witness may be informed how they came, so he won't have to guess at it.

Mr. Miles: Call out the life guards for the rescue.

The Examiner: Do you know how the cattle come, Mr. Mullen?

The Witness: I never know how they are going to come.

The Examiner: Do you know how they have come to you in the last year?

The Witness: No.

Mr. Miles (continuing): You have a general idea, don't you, based on your own experience?

A. Yes.

Q. Of course you have. Now, with that in mind—

A. A general idea, I just have a general idea, of course how they had been coming.

Q. And with that general idea in mind, I have now asked you about how many carlots you would receive before you would feel that you had to take on an extra salesman?

A. Right away.

Q. What do you mean?

A. I would have to have an assistant right away.

Q. At what figures? At 150 carloads per month, is that what you mean?

A. Or even less than that.

[fol. 1143] Q. Well, how much less?

A. Well, I will tell you, if I had four loads of steers and four loads of mixed cattle, I would need help.

Q. A day?

A. Yes.

Q. Now, about how many loads of steers and loads of mixed cattle do you believe you could handle in a day by yourself?

A. It would all depend on the market conditions.

Q. You would expect to sell all that you received, whether the market be slow or fast, wouldn't you?

A. I would expect to.

Q. And you generally sell all you would receive when you were in business by yourself?

A. Generally, yes.

Q. And you carried over cattle very infrequently?

A. Yes, sir.

Mr. Miles: Now, with that situation in mind, will the reporter read the question back about four previous questions?

(Whereupon the following question was read: "Now, about how many loads of steers and loads of mixed cattle do you believe you could handle in a day by yourself?")

The Witness: Was there a question?

Mr. Miles (continuing): If you please.

The Witness: I beg your pardon, read the question.

(Whereupon the question was re-read.)

The Witness: I don't know.

Q. Have you any idea how many carloads of straight steers you could handle in a day, sell in a day, without assistance of another salesman?

[fol. 1144] Mr. Boyd: Now, Mr. Examiner, I object to that and I do not want to be accused of coaching the witness.

Mr. Miles: I am not going to accuse you.

Mr. Boyd: I think he should be given some facts about the situation.

Mr. Miles: We make no accusation.

Mr. Boyd: You will in about a minute, and I just wanted to anticipate it.

The Examiner: Do you need any more facts?

The Witness: Any more facts?

The Examiner: Than are contained in the question?

The Witness: I cannot answer the question.

The Examiner: Whether you have the facts, or do not have any more facts?

The Witness: I cannot answer, no, sir, how many loads of cattle I can sell in a day. That is impossible for anybody.

The Examiner: No matter what facts you have, Mr. Boyd raised the question that you needed more facts; and no matter what facts you have, you cannot answer?

The Witness: No, that is impossible.

The Examiner: That is all; I just wanted to know.

Really, I don't know the greatest number I ever did sell in a single day. I would not even make an approximation. I don't know how many carloads I have sold this calendar year, 1933. I would not know without looking the greatest number I have sold by carlot or by head any day this week.

[fol. 1145] Redirect examination:

If I remember, that question was how many loads would I need to open up my own business to clear the business for myself, and I answered one hundred fifty cars, but I did say that I would want additional salesmen to help do the work, whether I got one hundred fifty or whether I got fifty I would have to have help.

Recross-examination:

I would have to have help to sell fifty cars of cattle a month by myself, with whatever yard help I wanted. We don't have the same kind of cattle. The help that I would want would be a man to either sell the steers or the butcher stuff for me; having one butcher salesman, and one steer salesman, I do not know how many the two of us could care for and sell. (The witness was shown a record that on June 5 of the present year, he received seven carloads of cattle, the day of the week being Monday.) With reference to that I haven't been in the office much before three o'clock that I can remember. I don't know that particular day, really, I don't know whether I sold seven load- before three o'clock in the afternoon. It would depend a good deal on what they were. Perhaps Mr. Gillogly might have sold part of them

if they were butcher stuff, but I don't remember that particular day.

[fol. 1146] Redirect examination:

I said I had a general recollection of the way my business arrived during 1932 during the month of January that year I cannot remember the number of head, single ownership, cattle, that were sold by me during that month. I am not going to say that I can remember within five hundred head how many I sold during the month, or was sold by the Mullen Commission Company during that month. I do not remember how many I sold that month, single ownership that arrived by truck, or the proportion that one bears to the other. As a rule it takes a different length of time, in my judgment, to handle the same number of cattle coming by truck as coming by rail. It takes longer to handle the trucks.

Q. Would it make any difference in making an estimate or asking you to make an estimate to know the number of drafts into which you would have to sell, the response of the market——

Mr. Miles: What kind of an estimate?

Mr. Boyd: Sir?

Mr. Miles: What kind of an estimate?

Mr. Boyd: An estimate of the amount of business you could sell in a month, any month.

Mr. Miles: Well, now, Mr. Examiner, the witness testified in answer to Examiner's question that he didn't know.

Mr. Boyd: And I want to show the reasons, if I can, why any man would be completely at a loss to answer that question.

Mr. Miles: And getting the witness' statement, as I understand you, would prove that no man——

Mr. Boyd: Would prove that it is reasonable that he could not know, and that he has not been instructed to say "I don't [fol. 1147] know." So that the man who reads this record will understand, if you please, just what calculations a man is asked to make mentally in order to answer a question like that.

Mr. Miles: Would you care to stipulate into the record the transcript of testimony in every commission rate case

that has been heard before the Department, where a similar question was asked, a similar question answered by commission men at various markets?

Mr. O'Bryan: That is not any sign——

Mr. Boyd: No. But I am willing to stipulate into the record, if you please, that the man who answered that question seemed to answer it without regard to the things we are now raising and without taking into consideration the facts that if that had been put to them in a proper way, they would not even have made any kind of a guess or estimate or whatever you want to call it.

Mr. Miles: I do not see how you can stipulate as to what they seem to do. No more argument.

Mr. Boyd (continuing): Well, now, Mr. Mullen, in the month of January, you had 1,492 head of cattle arriving single ownership in straight cars; there were 50 owners, 50 account sales and 165 drafts; in other words in that month, there were a little over three drafts per account sale. Now do you know what business you handled in the month of May in that year?

A. No.

Q. Are you able to say the number of owners?

A. No.

Q. The number of account sales?

A. No.

Q. The number of drafts?

A. No.

Mr. Miles: Objected to as immaterial.

The Examiner: Objection overruled.

[fol. 1148] Mr. Boyd (continuing): There were 809 head, 21 owners, 21 account sales and 83 drafts, during that same month; you had plural ownership in the month of February, seven carloads of cattle in straight cars, 190 head, twenty-seven owners and fifty-nine drafts. Now, is it not true that your business comes mixed as to whether or not it came in straight cars or whether or not requiring a certain number of sales to be made in the carload, either one or more, that the business may come where there are several owners in a car, there may be more than one or as many as ten or twelve, that that requires separate treatment by you as a commission man? You handle plural ownerships different than the handling that is accorded in the case of

single ownership. You have to keep the owners separate, the identity of the animals has to be preserved?

A. Is that a question?

Q. Yes.

A. There is no question in anybody's mind that has been in this business but what a plural ownership in a car makes just that much more work; more owners there is the more work.

Q. The number of drafts into which you have to break up a shipment increases the number of sales necessary to be made to dispose of them?

A. Yes.

Q. Now, if the 1,492 head that you received could have been sold in one draft, and I mean, by that, one sale, that would have required one amount of work?

A. Yes.

Q. And if you had been able to sell them in 100 drafts that have been something different, would it not?

A. Yes, sir.

Q. And you actually sold them in 165 drafts. Now can you tell me how long it would have taken you to sell those 1,492 cattle if you had sold them in 100 drafts?

A. No, I cannot, no.

[fol. 1149] Q. And can you tell how long it would have taken if you had sold them in 200 drafts?

A. No, no one could do that.

Q. Sir?

A. No one could do that, it would be impossible. We don't know how long.

Q. Then, can you tell how many carloads you can sell without knowing all the circumstances surrounding the situation at the time, can you visualize conditions over a year and decide what you can do either during that year or during the subsequent year when it takes accountants weeks to draw off the information to tell what you actually did and record it on paper?

A. No, I cannot tell.

Q. And then the accountant knows nothing of the time it took, but simply reflects the parcels in which you had to sell your business?

The Examiner: Read the question.

(Whereupon the question was read.)

Mr. Boyd (continuing): Now, do you believe that your inability to answer the question on the part of Government counsel was due to the fact that somebody said to you you should not answer that kind of a question, or did anyone give you a suggestion of that sort?

A. Absolutely no. Nobody told me that. I cannot answer the question.

Q. Well, do you think that any thinking man can answer the question as to what a man can sell in a day and accurately reflect the facts?

A. It is impossible.

On June 5th, 1933, our firm received seven loads of cattle and two mixed loads, two pieces of loads of cattle, two part loads. I forgot to ask if there were any truck cattle on that day. That was Mullen Commission Company's individual business. But I did not find out what of [fol. 1150] that business I sold.

If I were asked a question about two loads, coming in next Monday morning I do not think I could approximate the length of time it would take me to sell them or could say with absolute assurance that I could sell them at what I believed to be the market price. The difficulty confronting me as a salesman is to get what I think they are worth.

Fred J. Shorter, a witness called by the Respondents, testified as follows:

Direct examination:

I reside at 4659 Drexel Boulevard in Chicago and am employed by the National Live Stock Commission Company as a cattle salesman, and have been so employed for something over 15 years. I have been selling cattle on commission as a salesman over twenty years. My experience has been at this market and Omaha. I have sold livestock on commission at Omaha. We get orders from time to time for cattle and I have filled orders at various times, bought cattle. I sell butcher cattle. I have sold butcher stuff for twelve years for the National. The National classifies butcher stuff as cows, heifers, yearlings, calves and bulls. I sell all the types I mentioned.

Butcher stuff pens are much smaller than steer pens.

The steers come in larger bunches than the butcher stuff. [fol. 1151] The National has two butcher alleys, and I sell butcher stuff in one alley, and Mr. Crawford sells butcher stuff in another alley.

An alley is a part of the yard that is between two series of pens, usually the pens open both ways on the alley, that is pens on each side of the alley open on to the same alley. I have only one alley in which is done all the sorting of the butcher stuff within my alley, and Mr. Crawford has a similar alley in which the work is done in that alley.

Livestock consigned to other concerns are driven through that alley during the day. The alley is used not only for the purpose of sorting out cattle but is used as a route, as a part of a route for driving other cattle of other commission firms from one place to another in the yards. That driving interrupts our work at times. When they start through the alley, we cannot get our cattle out into the alley to sort them. We have to wait until they get out of our alley or the other person has to wait until we have finished what we are doing so they can get through.

The different grades of cattle that are consigned to me for sale are canners, cutters, beef cows, kosher cows, heifers, heiferettes, occasionally we have some milk cows, not very often. And we have different values within the [fol. 1152] grades I have mentioned; and those values vary according to the age and the condition of the animal. We have all classes of calves consigned, veal calves, strong weight calves and stock calves. They come in either single or double decks. Usually they come in mixed shipments with cows and other classes of cattle.

As to how Mr. Crawford and I divide our work as salesmen in selling butcher stuff, we have two separate alleys, and we aim to handle it the best possible way, of course, not trying to crowd one a bit more than the other, that is trying to keep it evenly divided as near as we can. To a certain extent it is a question of having adequate pen room for the livestock. At times we need more pens. We have both been there a number of years, and there is certain cattle that he always sells, and certain cattle I always sell; I mean certain shippers' cattle whom he takes care of, and certain shippers' cattle I take care of.

If the cattle come from John Jones, for instance, and I have been selling his cattle for years, they put those cattle

in my pens, and if a shipper has been having his cattle sold by Mr. Crawford, they are turned over to him to handle. If he has got a good deal and I have not got much, I would take them. If I have a good deal and he has not much, he would take them. We both sell truck cattle and the same methods are followed with respect as to who will sell them as in the case of rail shipments. If the yardman [fol. 1153] is in doubt as to where to place them he will ask either one of us.

I work on Sundays during the western season practically every Sunday. I get out anywhere from six until eight o'clock. It depends on whether the cattle are in. The boys call me at a quarter to six or six o'clock and tell me the cattle are in. I go right over to the yards. Other times, if I am expecting a large shipment, I will maybe call at 5:30 in the morning and the man who is at the chutes will say they are in, I go over to the yards, and change my clothes and start sorting cattle, and I will be sorting maybe from seven o'clock Sunday morning until four or five o'clock in the afternoon. The westerns we get, the bulk are mixed steers and cows, and a good many different brands which we have to sort out for the various owners, and in some cases the owners are with them, and they don't seem to have any facilities for sorting the cattle up in the West and they just load them in the cars and leave it up to us down here to sort them for brands, and they want their own cattle together, to be sold together, they don't seem to like to have their cattle in with other cattle to be sold with some other bunch of cattle. The bulk of our westerns come from Montana. The cattle we get are pretty good cattle. They are fed cattle mostly. We don't [fol. 1154] get grassers from Kansas. In the fall of the year we get a good many Dakota cattle from the range, grass cattle.

We had a fairly large run of butcher cattle Monday. Last Monday I was out in the yards shortly after six o'clock. I got out a little earlier than usual; as a rule, I get there between six and six thirty but I was out in the yards shortly after six o'clock and last Monday was kind of a hard day to get going. The buyers kind of laid back on this butcher stuff and seemed to be waiting for them to fill steer orders more, and it made a very slow draggy trade, and it was late in the day before I got some yearlings

I had sold. I guess it was two o'clock or after before I could get Swift down my way and at that time I sold him quite a few yearling cattle. The trade with respect to cow stuff, was a very slow market, prices were not so much lower as it was a slow trade and hard to get action. Buyers would look but they would not do much bidding, and did not seem to care to buy any cattle last Monday. They would look at the cattle, you would price them, and they would not bid, and they would say, "well, I will see you in a little while." I went to Armour's office and got Armour's man out of the office and talked to him for awhile and he finally came down and bid me on some cows and after I got through with him, I went after Swift's man way up at the other end of the yards. I guess I spent probably forty-[fol. 1155] five minutes getting him down, and he stopped and looked at other cattle and had quite a few things to do before I could get him down there. It was around two o'clock I guess when I finally succeeded in getting him down and selling him some cattle. I think I did sell out on Monday. I did not sell out today. The situation today was that some of the trucks got in here rather late with stuff and it makes it rather bad. It is hard to get some of the buyers to come back out again now. Today I had—about a quarter of twelve—there was a bunch of calves come in and a couple of bulls. The bulls got in a little bit previous to that time, but by the time I went up and coaxed a buyer out of Armour's office to come down and bid me on these calves, Swift said they would not buy any more; Wilson was about through and by the time I coaxed Armour's man to come back and buy the calves the boy was working on the bull men. The bull market has been lower each day this week, and today there seemed to be plenty of bulls on hand and they just would not come out and buy them. It was not a case of price of anything. They would not bid on them. I was forced to carry them over and they are a kind, I don't know whether they will buy them on Friday. I don't know whether they will buy them tomorrow. I may have to go over until Monday with them.

It is nothing unusual to carry cattle over. The last six or seven months I have carried cattle over, I don't think [fol. 1156] there has hardly been a week that I have not had to carry cattle over. Not from one week to the next, but one day maybe or two or three days. I have been sell-

ing butcher stuff on this market for about twelve years continuously for the National. I sold steers before I went to the butcher alley.

I find that in the handling of butcher cattle, it now requires more sorting, more handling than it required for the same breed and kind of cattle five years ago. One truck will come in and maybe have five cows and have five different owners and you put strange cows in a pen together and they start hooking each other. If the owner is along, he wants them separated, wants his put in a pen by themselves. We have a great many more drafts and it is very seldom that five cows brought in in a truck will be alike. There will be some difference where the price will have to be different, making maybe five different sales. We have a greater number of owners in a case of rail cattle or butcher stuff arriving by rail than previously. I would say it requires them to be broken into more drafts for selling than previously, because they have eliminated the country buyer and now there are some of these shipping associations shipping to various farmers and each farmer will own a cow and a heifer or a bull or such things as that; there are different drafts, different owners, and they have to be sold and weighed separately; trucks the same way.

[fol. 1157] Cross-examination:

I was a livestock salesman before I began to work for the National on the Chicago market. I think it was about two years before. I was here when the war came on and I joined the Navy and I left the yards. I was selling steers, and working for Walters and Dunbar. As to whether during the period of my experience prior to the time I went to work for the National, I built up an acquaintanceship and established a sort of personal following of my own, maybe I ought to be ashamed to tell this: but when I went with the National, I expected to take all the business of Walters and Dunbar, but, to my surprise, I took none.

I was told by the National when hired by them that I was not being hired for my business but to help hold the business that they had.

I do not know how many cattle I sold personally last Monday. I really would not know without looking it up; if you had told me, I could have checked it up. I would not know off-hand. I am employed on a straight salary

basis. I am not now working for the same salary that I was when I first came with the National. I went with the National on a five year contract, and after the first year, I was to receive more for the next two years, and, then, at the end of that time, I was to receive a certain salary, and, as time went on and the business got bad, there were times that we, everyone with the firm, took a cut. It was the first [fol. 1158] of this year I believe, 1933. There were two cuts, one in 1933 or maybe the latter part of 1932; I believe they were in 1933.

I do not recall how ma-y butcher cattle the National had in its alleys last Monday. Not many of our butcher cattle come in straight, single ownership carloads. They arrive, where it is a shipping association, of course, there are a good many owners, and, if one man happens to have a load of butcher stuff himself, which is rare, why, there will be different types of cattle, cattle which he has bought here and there, and, naturally, they are different kinds.

Most of the steers of the National come in much straighter carloads than the butcher stuff.

I know how many cattle I sold today. I would not know exactly just how many I sold. I do not know how many carloads of butcher cattle my firm received today. I don't know how many cars we had total. I didn't look. We keep a list of them, but I didn't look; as far as keeping the butcher stuff and steers and that separate, we don't keep any tabs on them; we never have. I do not know how many head of cattle were received altogether by our firm today. There is usually a buyer that will give something for all kinds and classes of livestock that comes here. When it is necessary to go to the packing house offices for a buyer, I usually go myself or send my yardman.

[fol. 1159] It has always been to the best of my knowledge that a commission firm, or any kind of a successful commission firm would have a steer salesman and a butcher salesman.

Yes, I solicit business some. I don't know what percentage of my time I spend in making trips to the country for the purpose of soliciting business. I would say in the course of a year maybe a month; maybe I would say probably twenty-five to thirty days out of the year. These trips are scattered throughout the year. I go to the country to

whatever section the firm thinks it advisable for me to go. Someone else directs me in that respect. On my soliciting trips I solicit cattle, hogs and sheep.

(Mr. Shorter was temporarily excused.)

Mr. Alfred C. Baker, Jr., a witness called by the Respondents, testified as follows:

Direct examination:

I am a member of the firm of Baker Heyne and Company, a partnership. The partners are my father, A. C. Baker, my brother E. H. Baker, Fred L. Heyne and Walter B. Heyne and myself. It is not an equal partnership. The firm was established in 1906. I sell steers and certain classes of heifers, yard stock, solicit, work in the office; I have quite a little to do with the advertising of the firm, [fol. 1160] write letters to the country. My father has been in the commission business for fifty years and I have been around here ever since I was a kid, but I have only been a full fledged salesman since 1920. When I first started in the commission business I yarded stock and took care of them and helped weigh them. I did that until 1920, and am still doing it so far as that goes, but I did that as a kid around here, and then when I came to work here, I continued doing that and I sold hogs for a whole year. I started selling cattle by selling odd steers, and after that I started to sell all kinds of steers. My father and Fred L. Heyne also sell steers for the firm. E. H. Baker sells hogs and yards hogs and works in the office; A. C. Baker Sr. sells cattle, steers, certain grades of heifers he sells also. F. L. Heyne sells steers and certain grades of heifers. W. B. Heyne is a hog salesman and a member of the firm. John L. Baker is no relation, he is not with us any more, he was a yardman, but he was with us during 1932. R. Briggs is an all around yard man and works in the cattle alley and hog alley and helps out with the circulars, assists in the office and lines up the trucks and looks after the feeding of cattle that come in at night and so forth. J. Gerlock is the butcher salesman, and he also yards and [fol. 1161] assists in the office. W. A. Shirley is our bookkeeper; C. Vangier is the office man and looks after corre-

spondence under our direction. V. Bartee has been an office man until about the first of the year, and we use him as a yard man now in the morning and as an office man in the afternoon. T. Sheehan is the extra man at the scales. Works for different concerns. F. Marsch is our sheep salesman, Art Slaughter is the check-up man; we have a man by the name of F. Speck at the hog scales in the Northwestern division. We have to employ extra help. We do not divide up the work in handling steers. We all work together on steers. On Monday, after we got the check-up from the Stock Yards Company, and John Gerlock, takes certain steers or butcher stuff to the alley, or whatever the case may be, and I take certain yard loads to the alley, and Fred Heyne does the same thing, and we usually sort the cattle, either Heyne and I, or John Gerlock, and then we split them up in strings and after that we have them all set in the pens when Father, Fred Heyne and I walk through the cattle to determine values, consult one another on them, get the various opinions as to what they are worth, considering market conditions, and the kind of cattle, and very often we have five or six loads of heavy steers; Fred Heyne will take those particular steers, and [fol. 1162] may have my father take the yearlings, I may take the stockers and feeders—it just depends upon the number of cattle we have, and the number of cattle on the market, the weather conditions and other things considered. Fred Heyne may show and sell the heavy steers, and then again, he may show them and I may sell them. He may have shown them to three, four or five or six men and I may then complete the sale. We receive cattle from Indiana, Illinois, Iowa, Wisconsin, Minnesota, North and South Dakota, Montana and Wyoming, and Missouri and Kansas. I would not know from what place we receive the most of our cattle, without looking at the cattle, because I never keep track of the number of head or anything like that. We handle quite a few western cattle from Montana and Wyoming. They usually start in the fall of the year, sometimes we get them as early as June, extending until the latter part of December. The conditions that exist in the States from which they come change the dates and time and months of marketing—there are water conditions to be considered, range conditions, financial condition, market conditions.

Our receipts vary from month to month according to those conditions. The conditions that would affect the marketing of cattle from nearby states would be the same as I have stated:

[fol. 1163] Q. I notice, Mr. Baker, that, during the month of January, cattle received in straight cars, single ownership and plural ownership, compared one with the other, one class of business with the other, that during the month of January, 1932, you had 558 head straight cars, single ownership, requiring twenty-one account sales and sixty-six drafts; and during the same month you had 203 head, plural ownership, requiring fifty-one account sales and ninety drafts; and, during the month of September, you had 951 single ownership cattle requiring thirty account sales and 122 drafts; during the same month you had 1365 plural ownerships, that is, head of plural ownership cattle, requiring ninety-three account sales and 251 drafts; in other words, there was a decided difference in the way your receipts came from month to month. In the month of January, you had over twice as many single ownership cattle as you had plural ownership. During the month of September, you had about fifty per cent more plural ownerships than single ownerships. What causes the variations, those wide variations in your receipts?

A. There is no rule to go by. I would not have any idea of that.

Q. So you cannot tell, in the handling of your business whether that variation will exist from month to month or from year to year?

A. No.

Q. Do you know the condition or do you now recall the condition under which you sold the 1365 plural ownership cattle during the month of September?

A. No, I don't.

Q. Do you recall the conditions under which you handled the 203 head during the month of January of that year?

A. No.

Q. Do you know how long a time was required to handle any of the animals mentioned to you as arriving in 1932?

A. No, I haven't any idea.

[fol. 1164] Q. Is there any means by which you can determine that fact at this time?

A. Accurately?

Q. Yes.

A. No.

Q. During the month of April, 1932, you handled 294 head of straight cattle, single ownership, necessitating fifty-eight drafts, and comparing that with January, you handled 264 head more cattle in the month of January with only eight more drafts than were required to handle the 294 head in April. Do you know why it was necessary——

A. No.

Q. —to have a greater number of head per draft in January than in April?

A. No, I know the things that may determine that.

Q. What are those things, Mr. Baker?

A. Maybe market conditions, it may be that we just happened to have certain straight feeder loads, there is no particular way to figure it or rule to go by.

Baker Heyne and Company, in the employment of its help, is required to maintain the force throughout the year. And the salesmen, and the yardmen and the office men are maintained from year to year. We could not get along with any less people than we have got, the way it is now, we could not do any more, I don't think.

Q. The analysis that has been made by the Government indicates that during the month of January your total commissions were $4,600; that in April it was $2,600; in July it was $2,000; and that in September the amount jumped to $5,100; the month of November was $4,900; and the month of December dropped back to $2,300. What do you do to attempt to make the months' income as uniform as possible?

[fol. 1165] A. Well, we put forth every effort to get out in the country and get as much business as we can to keep the light months up.

Q. But you are not able to accomplish that?

A. No.

Q. And, by the exercise of any effort known to you, it is impossible to overcome that fluctuation?

A. No, it is not possible.

Q. But your expenses are more or less fixed from month to month?

A. Yes.

Q. That is, certain parts of the expenses are fixed?

A. Salaries are all the same, and rent, and things like that.

In the matter of travel, the members of the firm usually get together and decide where a solicitor will go. Sometimes we have letters from the country requesting us to come down and look at their cattle and we don't like to send a man down to look at one small bunch of cattle, but, if we can figure where he can go down to see his cattle and acquire some other business, and we think it is profitable to do it, we send that man in that particular territory and most every trip that is made is usually prearranged by the members of the firm so as to avoid spending any unnecessary money or time and accomplish the greatest results. They solicit all kinds of livestock.

[fol. 1166] I couldn't say in what states our solicitors spend most of their time. As to where I spend most of my time, I spent twenty days divided between Illinois and Iowa, and about thirty-five days in Wyoming, Montana, North and South Dakota. It just depends upon the conditions in the country to which I travel and where the business is and what our customers are and what their problems are.

My last trip to the Western territory was last August. I was in one town, Baker, Montana, and there were eleven solicitors there from St. Paul and Sioux City, I do not know how many from each place, but there were eleven there working on one string of cattle, and nearly everywhere you go St. Paul has two Stockyards Company men and they work practically all the year around for the Stockyards Company at St. Paul and Sioux City, sometimes have one and sometimes two, but they seem to work up in my territory, and then there are solicitors for the various firms out of these markets who are not supposed to, but they also solicit for this market, and these solicitors have this market, most of them are from St. Paul, Sioux City, Omaha and Denver, working in the territories I work. I come in contact with other solicitors from this market. I would say one or two of the boys that go from here that I know.

Notwithstanding the presence of other solicitors at Baker, I was able to get three or four cars. It was due to

the fact that they had the class of cattle that I was positive that would sell for more down here and the men be-
[fol. 1167] lieved what I told them. If I had not been there, I would not have gotten any of them.

I would say that it is 1200 miles from Chicago where these particular cattle were. In soliciting I go from Glacier Park to Wilson, N. D., on the Great Northern, and I cover Great Falls, the Judith Basin and down in that Baker territory, and from Billings and Helena and I don't scratch the State as far as covering the whole state is concerned. If I didn't make the trip we wouldn't have any business up there in a couple of years; it would probably go to St. Paul, Sioux City or Omaha or any one of those other markets. I know that none of the traveling that I did during the year was unnecessary.

I know the results justified the amount of money which I spent. We all try to be very careful and not spend any money unless it is necessary. I was not wasteful or extravagant with the money that I spend while I was on that trip. No other person with our concern was soliciting in Montana or in Wyoming. We don't send a solicitor to Kansas; my father has some friends down there of his that he had had for fifty years; we don't get much from Kansas.

We sent Mr. Gerlock to Nebraska and he had difficulty in getting the cattle by Omaha. We receive truck cattle that are sold by us in Chicago from Indiana, Illinois, Wisconsin and Iowa.

[fol. 1168] Q. In the case of single ownerships in cattle the average for your firm was 9.2 head per draft and 2.6 drafts per car, single ownership. In the case of plural ownership, your yearly average was 2.9 head per draft, 10.2 drafts per car. In the case of your mixed cars single ownership cattle you had 3.3 head per draft and 11.1 drafts per car. In the case of mixed plurals, mixed cattle, plural ownership, you had 2.8 head per draft, 15.2 drafts per car. Drive-ins, reduced to carload equivalents, you had 1.5 head per draft and 22.1 draft- per car. In the case of seconds, reduced to carload equivalents, you had 3.2 head per draft, 8.2 drafts per car. In other words, your drive-ins were almost ten times as great in drafts per car and a seventh as great in the head per draft. As in the case of straight car singles. Now, in the number of head single ownership,

as compared to plural ownership, you had 6,703 head of single ownership and 13,307 plurals, almost twice as many plural ownerships as you had single ownerships, and you had over six times as many drafts in the plurals as in the singles, your average number of cars per salesman is 246 during the year 1932, as compared with the market average of salesman handling cattle of 394 cars. Assuming that the statistics which I have read you are correct, I will ask you to explain why, in your opinion, if you know, the salesmen for your concern handled fewer cattle, on the average, than the market average?

A. I do not know anything about those figures, statistics. Our salesmen handle all the cattle they can get. That is all I know. I could not follow you on all that stuff, Mr. Boyd.

Q. Do you think it has always been true that your single ownerships are half, were half of the amount of number of head of plural ownerships, or has there been a difference in that during the past several years?

A. Well, we have actually never kept track of any, Mr. Boyd, I could not tell you how many cattle I sold or the number of head.

Q. While your business in cattle, single ownership, is [fol. 1169] only half as much as the business you sold that were plural ownerships, the National handled twelve times as many single ownership as plural ownership. Do you believe that a salesman, based upon your experience, do you believe that a salesman can handle more cattle in a way that they have to be handled on the market, if they arrive in the manner in which the cattle arrive and are sold by the National than in your case?

A. Well, it is just according to the measuring rod there, of how they are handled and so on and so forth.

Q. Well, the number of ownerships, the plural ownerships to single ownerships, would have much to do with the number of sales necessary to handle the same number of cattle, would it not?

A. Yes, sir.

Q. So that if you had twice as many plural ownerships as you had single ownerships, and the National had twelve times as many single ownerships as they had plural ownerships, do you not believe it would take you a great deal longer in time, the number that you could handle, without taking into consideration any other factor?

A. Yes.

Q. In the case of the market average, I gave you 394 cars as the average per salesman. I gave you your firm as two hundred forty six. Now, in the case of your firm, you had twice as many plural ownership cattle as you had single ownership. In the case of the general market, there are four times as many single ownership as plural ownership. Do you think that that might account, or does that account, in your judgment, for the fact that your average was two hundred forty six as against the market average, or have you any opinion about that?

A. I have no opinion.

Q. Do you believe that it would be fair to take receipts where there is such a variation as between that of your firm and that of the National as to single ownership and plural ownership in the amount of work that would have to be done incident to that difference, on account of that [fol. 1170] difference, to find that a salesman would be required to handle the same number of cars of the kind that you handle in the same length of time that it takes the other man to handle them?

A. I cannot see, there is no rule to go by to handle cattle; that is something that you cannot require anybody to do anything or expect anybody to do any certain amount.

Q. Now, the National average is high on this market as compared to the market average. You had less, you handle less cars per salesman than the average, the National handled more per salesman than the average. Do you not feel that the class of receipts, that the way in which they arrive, the number of sales that have to be made in order to dispose of cattle will have much to do with the amount of work that a salesman may do in a day, and that the difference may be accounted for by the actual receipts that were received during the year, coupled with other conditions that confront a salesman from time to time?

A. I do not think that there is any rule to go by in these plural ownerships or carloads or anything; you cannot tell a thing about it. It just depends upon the cattle market, the weather, and there is absolutely no rule to go by at all on one or the other.

Q. It may take a short time to handle a carload of steers on one day and a long time to handle the same kind of a

carload of steers on another day?

A. Absolutely.

Cross-examination:

As to who is the responsible head, responsible manager of the firm, I think my father and Fred Heyne are; I don't really know how to answer that question because in some issues, nearly every issue that comes up relative to finances, [fol. 1171] trips and everything else like that, everybody voices their opinion in the partnership and they try to do what they think is right. They don't usually do anything that any partner objects to if the partner can give good reasons for his objections.

As to how we determine whether an extra man should be taken on, somebody in the partnership would suggest a certain man and we would all talk it over and determine how cheaply we could hire this man and whether he would be a good man for us, and if we all thought he would be a good man and worth the money, we would put him on.

Our firm is the kind of a family affair, and if Fred Heyne for example, thinks that I am not getting enough money, he is liable to raise my pay next month. He will tell my father "I think Alfred ought to get more money," and he will probably raise my pay. We don't have any articles of agreement or anything like that. We are just a family affair and we talk the thing over and change it so that everybody is satisfied. In our outfit the salaries are based on just an ordinary fair living. When I draw money for my soliciting trips nobody ever questions any of the money I draw. I draw whatever I think I need, and I keep track of the money I spend, and when I come back off a trip, I tell the bookkeeper that my expenses for a particular trip [fol. 1172] was so many dollars. Nobody ever questioned my expense and I have never questioned any other member's expense. The firm pays all the expenses of traveling.

If I am informed or know that a shipper has been solicited by another firm on the Chicago yards, I certainly solicit that farmer. I don't know anything about what other commission firms do as to soliciting my business. I have met solicitors representing other commission firms doing business on the Chicago yards.

F. J. SHORTER, a witness called by the Respondents was recalled to the stand and testified as follows:

Redirect examination:

Before I left the stand yesterday I was asked to return and bring with me the scale tickets and the acc-unt of sales covering the business handled by me as well as the business handled by Mr. Crawford, the other butcher salesman, and I have done that. These are the tickets and account sales in front of me. I have made a pencil sketch of my butcher alley. I have but one copy of it. Respondents' Exhibit No. 7, being sketch of Shorter's butcher alley and pens was marked for identification.

Respondents' Exhibit No. 7 for identification is a sketch, showing the pens and alley I am in, runs east and west, have a short alley ru*n*inning north and south which con- [fol. 1173] tains six catch pens used for a few odd head of yearlings or calves and bulls, whichever we may need it for. The main alley is open at both ends. The west end is as you come out of our steer alley and the east end is leaving our pens entirely going into another firm's alley. The original scale tickets which I have brought with me are the original record which we maintain in our office. We are required to keep these records on file.

The account of sales are the originals. The first ticket is for one Holstein bull out of pen 57. The weight is 1250 pounds, it sold at $3.25 a hundred and the owner is Eno Saabo. The sale is listed on account sale No. 97, that is the fifth item on the account of sale. Scale ticket No. 2 covers two cows, Holsteins, weighing 1770, sold to North American, price $2.10. Scale ticket No. 3 covers three calves weighing 432 pounds, sold to Siegel and Weller, sold at 6 cents. That is the last item on account ssales. This is part of a mixed shipment. There were hogs in the shipment but I didn't handle them so I didn't bring the hog tickets. That is covered by scale ticket No. 3, so that tickets Nos. 1, 2 and 3 cover all the cattle on account sale No. 97.

In the case of scale ticket No. 1, covering one Holstein bull, it was yarded in pen 57, a catch pen, and is indicated with the figure 1 with a circle around it to indicate that pen. The animals on scale ticket No. 2 were yarded in [fol. 1174] Pen 37, which is shown with a circle 2 on the

sketch. And the three calves were yarded in the same pen as the bull, pen 57, indicated by a circle 3 on the sketch.

Account sales No. 337 is a truck shipment from Abe Karlinsky, consisting of one brindle heifer, weighing 1140 pounds, sold to Hammond at $4.35, indicated by figure 4 on the scale ticket. Ticket No. 5 covers one roan bull weighing 1580 pounds at $3.50 sold to Brown and Smith.

Ticket No. 6 is for one horned cow, weighing 1440 pounds sold to Hammond at $3.50. That is all the cattle there are in that shipment.

The animals covered by scale ticket No. 4 were yarded in Pen 38 front. No. 38 is the pen with a front and a back; there is a gate in the middle. That is indicated by a circle 4 on the chart. The cattle on scale ticket No. 5 were yarded in catch pen 52, indicated by circle 5 on the chart. Scale ticket No. 6 covers the horned cow, and was yarded in the back of pen 61. The reason we could not put this cow and heifer in the same pen was that this big horned cow was hooking the rest of the cattle up. That is indicated by circle 6 on chart.

Account sales 339, covers one calf weighing 210 pounds, sold to Shannon, at $6.50. It is covered by scale ticket No. 7 and the animal was yarded in pen 59, catch pen, indicated by circle 7.

[fol. 1175] Account sales No. 338, James Long, arrived by truck, consisted of two cattle, one blue cow weighing 1270 pounds sold to Armour at $3.65. That is scale ticket No. 8. And one red bull weighing 1580 pounds, sold to Brown and Smith at $3.25. Scale ticket No. 9. The animals sovered by scale ticket No. 8 was yarded in back of pen 38 indicated by circle 8; the animals shown on scale ticket No. 9 were yarded in pen 51, a catch pen, indicated by circle 9.

The next shipment is covered by account sales 336, H. A. Linne, one steer weighing 1470 pounds, sold to Hammond at $4.25. It is scale ticket No. 10. Two red cows weighing 2110 pounds, sold to the Crescent Packing Company at $3.50—scale ticket No. 11. Two cows, weighing 2250 pounds, sold to A. Livingston, at $3.25—scale ticket No. 12. The one steer was in pen 49, front, indicated by circle 10. The other four animals, two and two, were all in the same pen, 61 front. That is indicated by circle 11 and 12.

The next shipment was from Vern Hamilton, a truck

consignment from Gennessee, Illinois, consisted of two cattle, one roan bull, weighing 1470 pounds, sold to Armour & Co. at $3.35. It was yarded in pen 58, catch pen, indicated by No. 13. I did not sell the other animal. I think it was sold by Mr. Crawford.

[fol. 1176] The next is a mixed shipment of cattle and hogs, W. M. Boose, arriving by truck; it contained one cow, two calves and six hogs; one roan cow weighing 1070 pounds sold to Swift at $3.35,—No. 14, was penned in catch pen 50, indicated by circle 14. Two calves, sold to Empire Packing Company, weighing 550 pounds at $5.50, scale ticket No. 15; it was yarded in pen 50 the same as circle 14. I have marked this circle 15 on the chart. That completes that shipment.

The next shipment covered by account sale No. 344. Arrived by truck from Conard and Davis, Salem, Iowa, contained 13 calves. Individual checks were written and mailed to Conard and Davis; they then distributed the checks. This is a co-operative shipment; there are six calves weighed out for Morris, the other seven calves were weighed together and the shrink is prorated through the entire shipment. There is one calf weighing 120 pounds with three clips on the back, and one calf with X on the left hip, weighing 180 pounds, sold to Armour at $3.50. I have marked that scale ticket No. 16. The next scale ticket covers one calf weighing 240 pounds, XI on the left hip, one calf weighing 230 pounds, one slash on the left hip, selling to Armour and Company at $4.50. Have given that scale ticket No. 17. One calf, V on the left hip, weighing 170 pounds one calf with three clips on the back, weighing 130 pounds, sold to Armour at a nickel a pound. Am giving that No. 18. The other seven calves were weighed to-[fol. 1177] gether and they weighed 1250 pounds, sold to Armour and Company at six cents. Am giving that No. 19. The animals shown on scale ticket No. 16 were yarded in pen 51, indicated by circle 16 on the chart. Scale ticket 17 was yarded in pen 51, indicated by 17 on the chart. Two calves weighing 300 pounds, No. 18, was yarded in pen 50 and shown with circle 18 on the chart. The 7 calves were also yarded in pen 50 and is shown as circle 19 on the chart. These calves did not arrive until a quarter to twelve and by that time, a good deal of the other stuff had been weighed out, so we had to use those other pens again.

Account sales No. 98 covers two bulls which I handled that I did not get sold that I carried over and sold them this morning. That consignment came from Columbus Junction Shipping Association, Columbus Junction, Iowa, and arrived by rail. The balance of that stuff was cows and heifers and steers, and there was one cripple down at the chutes, had to be hauled out and sold down there. I sold that one at the unloading chutes, however. Of the Columbus Junction shipment, I sold one calf to Swift, 150 pounds at $5.50, shown by scale ticket No. 28. That was penned in pen 41, and is shown by circle 28 on the chart; one calf to Swift weighing 90 pounds at three cents, scale ticket 29 was put in the same pen, No. 41, shown by circle 29.

[fol. 1178] Account sales No. 96 is from Edgerton Farmers Warehouse Company; a mixed shipment by rail, containing cattle, hogs and calves. I sold the cows and the calves; one cow sold to Wilson and Company weighed 1210 pounds at $3.15—scale ticket No. 20. Scale ticket No. 21 covers one brindle cow sold to Wilson and Company weighing 960 pounds at $2.75. No. 22 covers fifteen calves sold to Swift & Co. weighing 1970 pounds at $6.25. Scale ticket No. 23 covers six calves, weighing 570 pounds sold to Swift and Company at $4.50. That is all of that consignment that I sold. There were five steers sent to the steer alley. Scale ticket No. 20 penned in 43, indicated by circle 20. The other cow was also placed in the same pen indicated by circle 21. The 15 calves and 6 calves were all yarded in pen 51, catch pen, indicated by circles 22 and 23.

No. 95 was a load of cattle by rail, consisting of cattle and calves. I sold three calves out of that shipment, which consisted of cows, heifers, heiferettes and calves. The three calves I sold—two calves weighing 330 pounds to Swift at six cents is scale ticket No. 24. One calf weighing 110 pounds to Swift and Company at four cents—scale ticket No. 25. Scale ticket 24 was yarded in pen 57, a catch pen, indicated by circle 24 on chart. The other calf was also in the same pen, circle 25.

[fol. 1179] Account sales 88 covers 65 heifers. I sorted them in two bunches, covered by two scale tickets. The first scale ticket No. 26 covers 39 heifers, weighed 29,300 pounds, sold to Armour and Company at six cents. Scale ticket No. 27,—26 heifers weighing 17,380 pounds sold to Armour and Company at six cents. I sorted these heifers,

as you can see, there is quite a bit of difference in the weight of them, and the buyer had me weight them just the way I had them sorted, in two bunches, on account of the difference in the weights. These two loads of cattle were shipped by rail to another commission firm on Wednesday, arriving on Wednesday. They did not get them sold and the owner of them wired me to take them and sell them, and the firm turned them over to the National, so I went ahead and sold them. These animals were penned, scale ticket No. 26, in pen 47, front and back, indicated by circle 26. Scale ticket 27, containing 26 cattle, yarded in pen 48, shown by circle 27.

The next account sales, No. 200, covers one steer, belonging to Siegel and Weller, local packers. It weighed 770 pounds, and sold to J. B. Keller at $5.25. It is scale ticket No. 30 and was yarded in pen 62, shown by circle 30. [fol. 1180] The next account sales, No. 199, covers five cows sold for one of the traders, on two scale tickets; No. 31, three cows sold to Hammond, weighing 3700 pounds at $3.50; No. 32, two cows sold to Swift weighing 2350 pounds at $3.10. Those covered by Scale ticket 31 were yarded in pen 39, indicated by circle 31. Ticket 32 yarded in pen 60, indicated by circle 32.

The next account sales 198 covers seven cows sold for a trader. The first ticket, one cow weighing 1170 pounds sold to Hammond at $3.50, covered by scale ticket No. 33. Ticket 34, one cow weighing 1260 pounds, sold to Swift at $3.25. Ticket 35, one cow weighing 1050 pounds sold to Wilson at $3.25. Ticket 36, three cows weighing 2930, sold to Wilson at $2.90. Ticket 37, one cow, weighing 940, sold to Armour at $2.90. Those seven cows belonged to Mike Nolan, a local trader. Ticket 33 yarded pen 40, circle 33; ticket 34 yarded pen 37, circle 34; ticket 35 yarded pen 42, circle 35; ticket 36, yarded pen 42, circle 36; ticket 37, yarded pen 62, circle 37.

That covers all the cattle I sold yesterday, July 20, outside one crippled calf. The animal on ticket No. 1 was down at my pens before seven o'clock. The cattle, bull and calves came over to the alley together, and one of the boys took this bull and put him in a pen by himself. In connection with that bull, I showed the bull to Armour's buyer; [fol. 1181] he did not bid anything on it. He looked at it and said he wanted some better bulls. He did not ask me

to price the bull. I next showed him to a couple of yard traders who did not seem even interested in it. He was kind of a thin Holstein bull. I then showed him to Harold Brown to whom I sold him. I priced him at $3.60 and Mr. Brown paid $3.25 finally. I had some discussion with Mr. Brown about the price. I was trying to get him to put on.

The animals shown on ticket No. 2 that were penned in pen 37; they were two thin Holstein canner cows. Both of these animals were together when I first saw them. I showed them to various buyers but they were two very thin cows and some of the buyers would not bid on them. Armour bid me two cents a pound for them in the morning, and finally I got a speculator and he bid me $2.10 for these cattle. After showing them to various ones, I finally got Armour's man back and told him I was bid a dime more for the two cows than he bid on them, and, if he wanted them, he could have them. He finally said, "go ahead and weigh them." I probably showed them to four or five different buyers during the morning.

Scale ticket No. 3, they were three Holstein calves. I showed them to Swift's man, I showed them to Eddie Shannon, they both bid $5.50 for them. I finally sold them to Morris Weller at six cents.

[fol. 1182] Scale ticket No. 4 was a brindle heifer; showed it to Wilson, Swift, Armour some of the local traders. Wilson's man said it was too heavy, he couldn't buy it; Armour's man bid me $4.25 for it; I offered to take $4.50; and later in the day, I got Swift's man back and sold it to him for $4.35.

Scale ticket No. 5, one roan bull which I sold to Harley Brown. He is the only man I showed him to; the owner was there and seemed to think it was a very good price and I did myself so I sold him.

Scale ticket No. 6 was one big horned cow that was hooking everything, and I was bid $3.25 for that cow by Armour's man; Wilson's man bid $2.75 for it; the traders wouldn't bid on it; I finally sold it to Swift for $3.50.

Scale ticket No. 7 was a roan calf sold to Shannon. He was the only man I showed the calf to. Sold him for $6.50 which is quite a bit better than the calf, and certainly it was time to sell him. Shannon only buys a few calves and when he buys a few you could not go back and even weigh him one calf the way he bid you.

Scale ticket No. 8 was a big blue cow. I showed her to different ones, some of the traders, and I did not get anything bid on her, and I finally sold her to Armour for $3.65. [fol. 1183] Neither Wilson or Swift showed any interest in her, it was a fat cow, but kind of ill shaped.

Scale ticket No. 9 was a big red thin bull. I sold to Harley Brown at $3.25. Showed the bull to Armour's man and he said it was not the kind he was looking for, and other bull men didn't seem to be interested in it, so I sold it to Harley Brown.

Scale ticket No. 10 was a big roan steer that weighed 1470 pounds. Swift's buyer bid me $3.50 and Jakey Jacobs with Wilson bid me $3.50. I finally went to get another one of Swift's buyers and coax them to come down and look at the steer and told them it was a very good friend of mine that owned the animal, and what a good animal it was, and after I finally got him down there, he sat on the fence and laughed and told me to go and weigh it at $4.25. It was 75¢ a hundred more than anyone else would give.

Scale ticket No. 11 was two cattle I sold to Crescent Packing Company. We had four cattle in that pen, No. 61 front, and to begin with Armour's man bid me $3.10 on the four cattle, and Sam Siegle who buys for Crescent came along and bid me $3.50 for two of them. He picked out the two lightest cattle and bid me $3.50 for them, and I sold him the two cattle for $3.50 covered by scale tickets 11 and 12. The two heavier cattle I sold to a yard trader at $3.25. I previously showed them to Armour and Company.

[fol. 1184] No. 13 is one roan bull I sold to Armour at $3.35. Harley Brown had bid me $3.30 on it. I offered to take $3.40 and I sent one of my boys out looking for a buyer, a bull man, and bulls had been lower all week, you couldn't hardly get a man into the alley, and finally I got Armour in there and sold him the bull for $3.35, which was a nickel more than Harley Brown had bid me.

No. 14 was one cow that I sold to Swift for $3.35. Armour bid me $3.25 for that cow. Wilson bid me three cents for the cow. I sold it to Swift's buyer for $3.35.

Ticket No. 8 is two weighty calves, which I sold to Empire Packing Company. I was bid $5.25 for these two calves by Swift, Armour and Morris; Weller and Shannon had

bid $5.25 in the morning, and fairly late, he bought them at $5.50.

Ticket No. 19 are the 13 calves which got in around a little before 12 o'clock. They were showing signs of grass. They are a hard set of calves to dispose of; I had Wilson's man on them and he bid $3.50 for two; $4.50 for two; and $5.50 for the balance; and I finally went to Swift's office and talked to Swift's buyer and he said, "I've got all the calves I want; I won't go out; don't ask me to; I won't buy any more today."

[fol. 1185] Then I went to Armour's office and finally got Armour's man to go down with me and I sold him the calves, two at $3.50 and two at $4.50 and the bunch of calves, nine of the best calves I sold seven of them at six cents a pound with two out at a nickel a pound. It was late and the city butchers were through and you couldn't get them down there after twelve o'clock.

Scale ticket No-. 22 and 23—I was bid $5.50 on those 21 calves by Armour and Company and I sent for Wilson three different times and he sent me word back that he would try to get over, he was not sure. Then, I got the Hygrade man and he bid me, he really didn't bid on the calves, he said he would want to buy that kind around a nickel a pound. Morris Weller offered to buy the calves if I would sort them heavy, but he wanted to leave the mean calves out. Jim Ellich with the Illinois Packing Company bid me six cents for ten of the calves with the balance out at four. I finally sold the calves to Swift and Company's man, 15 calves at $6.25 with six light calves out at $4.50.

Scale Ticket- 20 and 21—this is the two cows which Armour bid me $2.50 for one and $2.75 for the other one. They were all from Edgerton, Wisconsin, which is a very good country and all the buyers know it and they have very good luck with cows up there, low-priced cows. They [fol. 1186] don't have many condemnations on them from that part of the country. So I waited for Swift and he didn't show up until late. I sold him some cattle late, but I finally got Wilson and sold the two cows to him, the lightest one at $2.75 and the heaviest one at $3.15.

Scale ticket Nos. 24 and 25—that was three calves I had in the pen. Armour's man bid $3.00 for one, $5.00 for one and $6.50 for one. Sold them to Swift and Company, one at $4.00 and two at $6.00. There were only three calves

in that pen besides the bull. I showed them also to a couple of different buyers, but they wouldn't buy that little common calf, so I would not sell them the two better calves. They all belonged to the same man.

Scale ticket No-. 26 and 27 represent 65 heifers. Seigel and Weller's man bid me $5.50 on the 26 light cattle; I showed the cattle to Levy's man but he said they were too high in price for them, he didn't want any high priced cattle. I showed the cattle to Roy Wimp and asked him $6.15 and he wouldn't bid on them. They were to- high for him. I got Swift's buyer and he bid me $5.90 on them. Different ones came along and looked at the cattle, but didn't act as though they were interested and I finally sold them to Armour at six cents a pound.

Scale tickets 28 and 29 represent two calves. I had Swift's buyer on them and he bid me $3.00 for one and $5.00 for one and I had Hygrade's man and he bid me $2.50 for the small calf and $5.50 for the best calf. So I later got [fol. 1187] Swift back again and told him I was bid $5.50 for the best calf and he told me to weigh the two of them to him, one at $3.00 and one at $5.50. Morris Weller was not any good on them, he would buy the best calf, but he wouldn't bid on the common calf, and these common calves that you have just one odd common calf, you cannot give it away. You have got to make them buy the common one when they buy the good one.

The next one is one steer that I sold to J. B. Keller at $5.25. Henry Schroeder bid a nickel for it. Ralph Bender bid $5.10 and I finally sold it to Keller at $5.25.

The next scale ticket No. 31 covered three cows which Armour bid me $3.50 in the morning. I offered to take $3.65 and Wilson's man bid $3.40 on them. I went back to Armour to see if he would put on any and he said he had about all the cows he needed, he didn't care whether he got them or not. Later I got Swift and Swift did seem the best so I sold them to Swift for $3.50 but he weighed them to Hammon, which is owned by Swift and Company.

The next ticket covers two cows which Armour bid me $2.75 for. A speculator bid me $2.75; Wilson bid me $2.90 for them. I finally sold them to Swift at $3.10. That was a speculator bidding on a speculator's business.

The next one, scale ticket 34, is for one big white-faced cow. I sold to Swift and Company, he weighed him to

[fol. 1188] Hammond; I was bid $3.25 on this cow by Armour's man. The cow belonged to a speculator and $3.50 was all he wanted for her and was satisfied so I sold her to Swift.

The next one, one big cow, I sold to Swift at $3.25. Armour bid three cents on the cow, Wilson bid $2.75, and it was fairly late and I had Swift and I sold him the cow for $3.25.

Tickets 35 and 36, there were four cattle in that pen. Armour bid me $2.75 on them. There was not the class of cattle that Swift wanted, at least, he said he didn't care for them. He didn't bid on them. Wilson bid me, but finally Armour came back later on and bid me $2.85 on the four cattle and I sold them to Wilson, one cow at $3.25 and two cattle at $2.90.

The last one is number 37, which covers one red cow which Wilson bid me $2.85, and Armour bid me $2.75 for in the morning, and later on, I got Swift and he was not any good on the cow, said he would not buy her unless he could buy her under $2.75. I finally sold her to Armour's man later on at $2.90. I told him it took $2.90 to buy her; I was bid $2.85, but I thought I could get the other nickel and he finally bought her.

[fol. 1189] That represents the total sales made by me on July 20, with the exception of one cripple- calf. I carried over two bulls. So that I sold one calf and one bull at the first offer, and the balance I went along on. In handling this number of animals I used all of our sales pens. I used 44, 45 and 46 yesterday morning for watering and in keeping the troughs filled up there, and as we would sort, we would sort into a pen where there wasn't any water and drive the animals in there and let them drink and drive them wherever we wanted them.

If I were given the account sales and scale tickets for the same day in 1932, if it were a market day, I would not be able to describe in the same way, the manner in which I handled the animals on that day. The transactions of yesterday are still fresh in my mind. A man might think back a long while, over some particular trade he might have, but he cannot remember each instance where he has traded or who he had or what they bid him, at least I know I cannot.

There are never any two days alike that I have ever been able to find.

I am ready to sell cattle any time a buyer shows up in the morning, but I would not know exactly what the time was I started selling on July 20 because you are working and not paying any attention to the time. Oftentimes I see a clock in the morning and it may be five thirty or six o'clock [fol. 1190] and I won't think of looking at the clock again until in the evening or late afternoon; I never pay any attention to the time; it is just a question of getting the work done in the yards and then going to the office and talking to the shippers and writing letters.

Recross-examination:

I would say it was around one o'clock when I went in from the yards. I did not try to sell the two bulls after one o'clock because I was not able to find a buyer. Yesterday's market was a decent market, about steady.

Redirect examination:

Q. Mr. Shorter, if you were asked to estimate the number of cars of cattle that you could sell in a year, or the number of animals you could sell in a day, you would have to take into consideration the circumstances with the same detail that was required in the handling of the business as you have described it on July 20, in order for you to make even a rank guess at it, is that true?

A. Yes.

July 20th was just another market day for me; each day finds different problems in the matter of selling. It is true that the attitude of the buyers as I have described them as existing on July 20th, of this year, may have been entirely different on other days on other markets. As to how many carloads I have sold on July 20, or carload equiv- [fol. 1191] alents; I suppose between three and four, I imagine it could be three or it could be four. There were two loads of heifers, and then there are some calves and bulls and cows and an odd steer. You could get them all in one car probably, or there would be a little over another car, it would be between three and four cars. That is, taking the truck stuff.

Respondents' Exhibits Nos. 7, 8 and 9, Witness Shorter, being scale tickets, account sales and charts for sales July 20th, 1933.

MR. A. C. BAKER, a witness called by the Respondents, returned to the stand and testified as follows:

Cross-examination:

I haven't any idea as to the greatest number of cattle that I personally have sold any day this week. I never keep track of it. I cannot tell you the greatest number sold by our firm, as a whole, on any one day, this calendar year.

Mr. Miles: Mr. Boyd read to you from the record this morning that the National Commission Company received many more straight carloads than you did and that proportionately you received many more mixed carloads, and you advanced as a reason, if I understood you correctly, that your failure to sell as many as the National was due to their mode of arrival, was that the impression you wished to convey?

The Witness: I could not tell whether we could sell as many cattle as the National.

Mr. Miles (continuing): That is based upon the number of salesmen?

[fol. 1192] A. I don't know how many salesmen the National has.

Q. I say as many per salesman as the National?

A. I don't know.

MR. A. C. BAKER, JR., a witness called by the Respondents, returned to the stand and testified as follows:

Cross-examination:

Q. You testified in answer to Mr. Boyd's question that in your opinion you could sell a great deal more if your livestock or cattle came as they did come to the National, did you not?

A. No, I said I did not know. It all depended upon the conditions at the time I received them, and so on and so forth.

Q. The note that I have and wanted specifically to call your attention to it: did or did you not say that in your opinion you could sell a great deal more if the cattle came to you as they did to the National.

A. If I said that I misstated it, because my understand-

ing of what I said was that there was no way of telling whether I could or not.

Q. It may have been my own misunderstanding. Now, you have told us some things with reference to the difficulty of handling livestock based upon the idea that there is plural ownerships, is that correct? Or let me put the specific question this way: assume that you had twenty head of cattle of the same—two cars containing twenty head each of the same kind, grade and quality, would there be any difference in the amount of labor involved in selling one car of single ownership and the other car of several owners.

A. You cannot tell a thing about it unless you know the condition. It all depends upon the condition of the market and weather conditions and all other conditions involved in the sale.

[fol. 1193] Q. And if all other conditions were equal, except that one was owned by one owner and the other owned by several owners?

A. You cannot tell a thing about it. You can only draw the conclusion by setting up an imaginary system.

Redirect examination:

Q. Now, we find from an examination of the statistical data prepared by the Government and the analysis made of commissions charged by Baker, Heyne and Company, that you collected a larger amount of commissions in the case of plural ownership cattle than you collect for the handling of single ownership cattle, the commission in the case of plural ownerships was $6,576, and in the case of single ownership, the commissions were $5,033 on cattle and in the case of mixed No. 2, which includes mixtures of cattle, calves, hogs and sheep, under cattle,—no, the total commissions for that class of business is $5,489, so that the three classes of business varied as between all commissions from mixed No. 2 and the cattle in single ownership straight carloads $400 in favor of the mixed, and the plurals $6,576 or $1,576 in favor of the plural ownership as compared to single ownership. Now, there was in comparing the single ownership and the plural ownership in cattle, there was, as I say a difference of a little over $500 in commissions, while the drafts in the case of single ownership were one-quarter as many as in the case of plural ownerships. Now, to take some specific instances of the variations that oc-

curred in your business, we find that during the month of January you had one carload that contained 19 cattle, one owner, one account sale, and one draft, on which you charged $17.00 commission; you have one carload that contained 36 head with one owner, one account sale, requiring eight drafts; you had one carload containing 23 head, one owner, one account sale, with five drafts; you had one car containing 23 head, one owner, one account sale, with three drafts. You had one car containing 24 head, one owner, one account sale, with two drafts. It is apparent from the figures which I have given you that the business of Baker, Heyne with reference to the number of drafts necessary to sell a given number of animals vary according to the circumstances confronting you at the time.

A. Yes.

[fol. 1194] Q. Now, in comparing single ownership cattle for two different months during the year under investigation, 1932, take the month of April you had 13½ cars, 294 head, 12 owners, 12 account sales and 58 drafts. In the same year during the month of October you had 35 cars containing 921 cattle with 31 owners, 31 account sales and 10 drafts.

(Whereupon the question was read.)

Mr. Boyd: If the Examiner, please, we find upon a further examination of the records that there has been a mistake made in connection with that item, that in reality there were 110 drafts instead of 10, which raises that figure one hundred and raises the total for the year from 608 to 708 drafts in case of cattle, single ownership. (Continuing.) Now, in connection with that same comparison, Mr. Baker, during the month of November you had 48¾ cars, straight plurals, containing 1,432 head of cattle, 188 owners, 188 account sales, with 537 drafts; the work incident to the handling of your transactions varies according to the necessities of each case as indicated by the differences in the receipts as reflected by the figures which I have read to you?

A. Yes.

Q. During the month of October you sold 145 truck cattle, 62 owners, 62 account sales, with 112 drafts. During the month of May you handled 233 head of trucked cattle, 80 owners, 80 account sales and 142 drafts, so that does it not

follow that the nature of the receipts coupled with the conditions under which you handle them cause you to make different classifications and different sales and require a different number of sales to handle the same number of animals?

A. Yes, sir.

Q. Are you able to estimate in advance what those differences in time, the sorting that will be required, or any of the other incidents of a transaction in advance of the moment that you are required to perform the service?

A. We are not, we are unable to.

[fol. 1195] Q. In order to determine the number of carloads of business that you could handle, as a salesman, of the kind of business that you, yourself, handle, and did handle during the year of 1932, would it not be necessary to have a great deal more detail in order to make a guess, even a rank guess, of the amount of work you might do than to have the small amount of detail that I have given you?

A. Yes, it would.

Recross-examination:

When I am on the road soliciting I recommend our own firm to the farmer and the Chicago market. I intimate to them that we can do as well as any of them. We sell the cattle that come to us day by day except a few days that we carry them over. We don't always sell them that way, sometimes it takes us three or four days. We put forth every effort to sell them when they arrive, and if we do not we have to hold them over.

Mr. E. A. Brotzman, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 4357 Greenwood Avenue, am president and one of the stockholders of Miller White and Woods. I am also a cattle salesman and sell butcher stuff. Our business comes from Illinois, Iowa, Wisconsin, and some from the Dakotas and quite a lot from Indiana. I have been with my present firm twenty years.

Previous to that I sold for Evans, Snyder, Buel, butcher stuff. We have only five men selling cattle at the present [fol. 1196] time; Graber and Husted sell steers. Work and myself sell cows and I also sell the calves, Hayes sells bulls; if we are short-handed and a man is away, Hayes helps on the cows or calves. I have general supervision over all the departments.

I solicit and all the other salesmen also make trips and solicit both cattle and hogs. We decide amongst ourselves what territory to solicit, if a man has some friends out in Iowa that have asked him to come out there, we say, "Go ahead and see them." On trips to see cattle we also try to get new business. For the year, I presume I will spend thirty-five to forty days. I personally solicit mostly in Wisconsin and Northern Illinois. I made my last trip in June to Northern Illinois. I went by rail; I did most of my traveling by automobile after I got there. I was only two days on the trip. I went because I was requested to look at cattle. I never counted them up, but I suppose I called on seven or eight farmers in the neighborhood there.

I have done everything possible to hold our expenses down. That applies to the trips I have made. I do not think we did more soliciting than was justified by the circumstances. I do not think there was any money spent [fol. 1197] that should not have been spent for that purpose. We made a reduction in salaries to take effect the first of July. That was done so we could live within our income. The expenses were greater than the income.

Q. The business of your company which arrived by truck in cattle amounted to 10,884 head, and you had 6,832 drafts, 3,757 owners; so that you had nearly twice as many drafts as owners arriving by truck, and you had less than two head per draft on the average, 7/10?

A. Yes.

Q. Do you believe that it could have been possible to have sold those cattle in a fewer number of drafts?

A. Not and satisfy the shippers.

Q. Well, tell the Examiner how you sell, go about selling this kind of a carload. One car, the first subdivision contained eight cattle, five owners, five account sales and eight drafts; the second seven head, sold in one draft, three head sold in one draft, two head sold in one draft; a total of twenty head with eleven drafts all together.

A. As I understand you, those different bunches are sold at different prices, are they not?

Q. I don't know, the price is not here, sir.

A. Well, the probabilities are that was a co-operative load of possibly——

Q. You charged $20.07 commission.

A. On twenty head?

Q. Yes.

A. The probabilities are that that load of cattle was sorted into three or four lots, that is three or four different [fol. 1198] pens. The cows was worth, say three cents a pound and graded at that price would be yarded by themselves. They might have been canners and might have been in another pen, possibly some heifers; they would all be yarded separately, the heifers would be yarded separately from the cows, Good cows would be yarded separately from the thin ones. Then, you would have to go and get buyers for that class of cattle.

Q. You might have several buyers for each class?

A. For each pen, you mean?

Q. For each class of cattle, and for each pen.

A. Well, we might show them to several buyers; we might not sell them to the first man on them if we had a bid on them.

Q. You might have to show these cattle to any number of buyers before you could get them sold?

A. Yes, because in that twenty head, that is sold in several lots, no doubt are sold to different buyers, because a man that wants fat cows won't buy stock cows or bulls, so you have to get different buyers.

Q. What would be the difference in selling that kind of a consignment and a consignment that consisted of two cars, where a man had twenty-three head from one owner, you had five head from one owner in one draft, and you had six head in the next draft, two in the next, nine in the next, one in the next, six in the next, two in the next, three in the next, one in the next draft, one in the next draft, four in the next and one in the next.

A. Well, judging from the number of drafts in your two-car shipment, there was probably just as much work selling that as there was in the shipment of twenty head.

Q. That is a two-car consignment, containing 62 head, there were thirteen drafts and each draft contained the number of head that I have previously stated.

A. How many drafts were there in your shipments of twenty head?

Q. Eleven.

A. Well, no doubt, it was as much work for the man selling those twenty head as there was in the two-car shipment, [fol. 1199] because he has got to sell those in different lots.

Q. And you had another carload that had twenty-nine head, two of them were sold in two drafts, fourteen in one draft, five in one draft, one in one draft, four in two drafts, and three in one draft; you haven't any idea what that consignment was, or what the contents of the car was, except that you know that there were certain head and certain drafts? Are you able, in any way, to make any comparison as to the length of time it actually took to sell that compared with any other load?

A. The time consumed in selling that car of stock with that many drafts would be much greater than a straight load of cattle.

Q. Now, is it not possible that a part of the animals sold readily that another part you had difficulty in finding buyers, who would give a price suitable to you?

A. Yes, sir, that is often the case.

Q. One may have been sold on one kind of a market and another sold on another?

A. Possibly a big bunch sold early in the morning and we had some tail ends that we would work on until late in the afternoon to get rid of them.

Q. During the entire month of November, which was your largest cattle month, I believe you had a total of six carloads of straight cattle and one six, that sold in one draft?

A. Only six?

Q. Only six cars out of your total month's business that you sold a carload at a time, necessitating one sale and one draft. Do you find that your business generally is of the type that I have described to you here-fore?

A. The bulk of it is of that type.

[fol. 1200] Q. It is noticeable that your cattle business varies from month to month, that your heavy hog months may be and are in most instances small cattle months; how do you account for that?

A. I could not exactly account for it.

Q. Is that one of the pecularities of your business which you cannot overcome?

A. Yes, sir, we cannot control shipments.

All of my cattle salesmen were fairly busy on most of the market days in 1932 selling cattle if it was a draggy market—on a good market we could get them sold out early, on a draggy market we would be working on them all day. We don't know one day in advance whether we are going to have a draggy market or what kind of a market.

I do not feel that the number of salesmen that were used for the sale of cattle that were received by us was more than was necessary. I believe on most market days the salesmen were using their full time during market hours to properly dispose of the business that they had to sell. I was so engaged. There are days when they are standing around waiting for the buyers to come, they are waiting, they are not busy, they are not selling during that time, I would say they are busy until they are sold out.

I believe that the business we had to do justified the employment of the number of salesmen that we used during 1932, otherwise we would not have kept them. I be- [fol. 1201] lieve that is also true of the salesmen we now employ. The difficulties of operating a commission business are getting more difficult.

Cross-examination:

The Exchange limits the number of days soliciting spent in the country to sixty-three. I think that limitation has been a benefit to the commission men to keep them from going out too much and also requires them to stay here and tend to their business. I don't know whether a further limitation on the number of days I could spend in the country would be a benefit or not if it were applied on all the firms. I have never gone out over forty-five days in one year, myself, I believe. I have limited myself to forty-five days because I have so many other interests here in connection with the firm. I testified on direct examination that I spent no more, meaning thereby, my firm spent no more on solicitation than in my judgment should be *been* spent. We base that on the prospect of getting business and satisfying our customers. If the man asks us to go out, we pretty nearly have to go to see them. Sometimes they are offended if we don't. I don't know whether we respond to all the requests made by prospective shippers to go out in the country and see them. We get a good many requests during the year and we might turn somebody

[fol. 1202] down. I would not make a trip personally to see six cattle, if it was any distance. If I were going in that neighborhood within five or ten miles of it, then I would go and see them, but I would not drive out fifty, sixty or one hundred miles to see six cattle. There are a great many cases where we get one or more shipments from a shipper where we go out which we would not have gotten otherwise; I could not enumerate them. I just couldn't give you any idea. I cannot tell you the expense of a single trip, and the number of shipments that I got as a result of that trip that would not otherwise have gotten.

Husted, one of my cattle salesman was a member of another firm. The firm dissolved and I hired him to sell steers. This man sold all the steers that were received. As to whether I expect him to sell all we received in order to pay him that salary, he did, that year. Taking the salary of employee No. 2, the man that drew that salary has a lot to do besides selling cattle. It represents my salary. It is a pretty hard question for me to answer how many head or carlots I would expect him to sell to keep him on the payroll at that salary. If he had a good big following and would bring us six or seven thousand dollars a year he would be a cheap man. My same answer will apply to persons Nos. 6 and 7 on the blue audit. Assuming that they had no business following and were simply used as salesmen, I would not employ them at all. I could not [fol. 1203] afford to hire any salesman unless they had a business following. If all of our salesmen are present on a particular day, Mr. Graver would sell yearling heifers and steers, because the steer men buy those. If you got a load of prime yearling heifers, we would put them in the steer alley. Mr. Husted sells steers. If all the salesmen were present he would not sell anything except steers. Mr. Work sells cows and heifers, and he sells that kind when all are present. That is what we hired him for, to sell butcher stock. If we might have an odd steer down there that was not worth sending to the steer alley, he might sell them or I might. Mr. Work is there to sell the cow stuff. Mr. Work does not sell all the cow stuff. I also sell cow stuff.

I would expect a steer salesman to sell all the steers we receive and the same would be true of the three remaining salesmen. They should sell all that was left, that would

be the cow stuff. Our firm usually receives the heaviest shipments in the fall. We get a lot of cars of cows from Wisconsin and Minnesota in the fall, we get a few westerns and we get fat cattle. As a usual thing our westerns come in one ownership cars but sometimes there are two or more. Where they come in single carlot one owner the amount of sorting required depends upon the kind of stock, [fol. 1204] if they are all steers, as a general thing, there is not much sorting, but should they be mixed sorts, cows, heifers, bulls and some calves, it is a lot of sorting.

On the assumption that they were all steers, single owners, I don't think it more difficult to sell a carlot today than it was ten years ago. The greater difficulty in selling cattle today as compared with the past is due to the fact that there are more owners represented in a single carlot. We have a great many cars of plural ownership. On big days, we work until late in the afternoon. We nearly always eventually sell, day in and day out, all that our firm receives, we aim to clean up if we can get the market for them. We sell all that we receive now and we formerly sold all that we received, speaking generally.

Q. Surely. You have been in the commission business for a great number of years, is it not true that from the time you came here to the present time, the commission men were constantly saying that business conditions are getting worse each and every year?

A. I don't think so.

Q. Do you recall the arbitration award of 1923?

A. Recall what?

Q. The arbitration committee that came out here to investigate the rates in 1923?

A. Yes, sir.

Q. Do you recall in 1923 whether it was not the complaint of commission men that business conditions had changed, that conditions were much more difficult then than in former years?

[fol. 1205] Mr. Boyd: I object to that question, Mr. Examiner. There is a typewritten record of every word that was spoken in that case and I submit that is the best evidence.

Mr. Miles: Oh, I didn't ask——

Mr. Boyd: And one of the arbitrators is present; if you

want to put him on the stand, he can testify to that accurately.

Mr. Miles: I appreciate your information.

(Whereupon the question was read.)

The Examiner: The question is: do you know,—and we will pass on one question at a time,—answer whether you know or not.

The Witness: What is the question?

(Whereupon the question was re-read.)

The Witness: I do not know what other commission men were doing at that time but I know my business was much more difficult and I would like to tell you why.

Mr. Miles (continuing): You may have that opportunity in just a moment. Were your business conditions more difficult in 1923 than in previous years?

A. They were more difficult than they were ten years previous to that time.

Q. And, now, you have testified, in answer to Mr. Boyd's question, that they are more difficult now than they were ten years ago?

A. Yes, sir.

Q. Now, you have volunteered the statement that you would like to tell us why they are more difficult. You have that opportunity now.

A. Ten years ago than twenty-five years ago is going back a long ways.

Q. I am willing to take up the time in the record. I thought that your statement was that you would like to [fol. 1206] tell now why they are more difficult now than they were ten years ago.

A. I want to go back further than that, if I may. You said that the record at the investigation had in 1923, the commission men said that business conditions were more difficult then than at the present time?

Mr. Miles: How long will it take you?

A. I don't think it will take five minutes.

Mr. Miles: All right.

A. About twenty years ago, or perhaps a little more, the country had a wave of co-operative shipping. They or-

ganized co-operative shipping associations all through the country, put ten or twenty, and sometimes thirty or forty owners, in one car, and they had to be sorted up here and prorated, bills prorated, and made a lot of work. By that time, we had buyers in each town that bought all the local stock and put in one car, shipped it in one man's name, one bill, one check is all that is necessary. Today we have to send twenty-five or thirty checks. That is, for the co-operative shipments. Later, truck drivers came in and they took over a lot of business that formerly came for cooperatives, and there is more work to a shipment now than there was to shipping associations, because we have no home weights, everything has to be weighed separately, each farmer gets a check where formerly the manager of the association got a check and he checks out to various farmers. That is why it is more work now.

Of my two steer salesman Mr. Graber sells the greatest number. I cannot tell you the exact proportions. It is safe to say two-thirds of it.

Redirect examination:

As to how I know that Mr. Graber sells two-thirds of our steers; that is a guess. I would estimate that he sells [fol. 1207] two-thirds of them. I know that Mr. Graber sells the bulk of the steers because he is the head steer man and the other man just came with us the first of January. I mean Mr. Husted.

Recross-examination:

Q. In your opinion, what may a cattle salesman be reasonably expected to sell, based on per day or on the month, assuming now that he had all that he could handle.

The Witness: It is pretty hard to form an opinion, Mr. Examiner. Market conditions some days, one could sell cattle much faster and easier than he could sell on others. I would not want to say how many cattle a man could sell in a day because so many things enter into the trading.

Our firm sells all the livestock that comes to us from day to day over the course of a year. We aim to sell all we can, sometimes we have to hold some over.

Q. Assume a steer salesman had five straight carloads of steers each and every market day throughout the year, in your judgment could he sell that number without any other salesman assisting him?

A. Five carloads?

Q. Yes, sir.

A. On a good market he could sell five loads. On a bad market, I have seen times when a man did not get any sold.

Mr. Miles (continuing): But at the end of the year, do you believe that he could have sold an average of five carloads per day each and every market day, recognizing that some days you have a fast market and some days you have a slow market?

[fol. 1208] A. Well, gentlemen, I believe I told you when I first came in here that I sell cow stuff, and I don't like to say what a steer man could do.

Mr. Miles (continuing): You are responsible for the employment of steer salesmen, are you not?

A. Yes, sir.

Q. You have told us that you took on one man as a steer salesman, based at least in part upon his business-getting ability, that is, he drew trade?

A. Yes, sir.

Q. Now, assume that that salesman draws five carloads of steers per day for each and every market day. In your opinion, would he not sell those five carlots of steers, taking it over the course of one year?

A. Well, sir, he could, if the market was right.

Q. Well, you would have days when it is right, and days when it is not?

A. Yes.

Q. I want you to consider the year as a whole.

A. I have seen the days when one man has sold a good many more than five carloads, and I have seen days when he could not get action. What he would do in a year, I would not like to state that.

Mr. Miles: (continuing): You say that you have seen days when in your opinion he could sell a great many more than five carloads.

A. I have seen a man sell a great many more than five carloads in a day.

Q. How recently?

A. This summer.

Q. Do you know how many carloads that man did sell on that particular day?

[fol. 1209] A. No, not the exact number.

Q. Could you approximate it, about how many?

A. Ten.

Q. Yes, sir, and how many days, in your judgment have there been in the past year when a man could not sell any cattle?

A. Well, he could probably have sold his cattle if he wanted to take the buyers' bid, if he was bidding, but if he was trying to get what he thought was the market, there have been days when he didn't sell.

Q. As a matter of fact, is the salesman compelled eventually to take the buyer's bid, even though he feels that he has not got a fair value?

A. If he thought he has not got a fair value, he may work them out the second day and possibly the third day.

Q. But, eventually, he must take the buyer's bid, if they are sold?

A. He don't have to take the buyer's bid today, tomorrow he may get an order buyer or the packer might be bidding today.

Q. But, somewhere, somehow and sometime he must take the buyer's bid, if he sells the cattle?

A. Sooner or later, he has got to sell them.

Q. Now, you have told us, if I understand you correctly, that you sell only the cows?

A. I sell cows and calves.

Cows and calves very often come in one car. We had some Monday this week. I didn't get the count of this load. There were some steers in it and some cows, and I [fol. 1210] think nine calves. I don't remember how many cows or how many steers, some steers were cut out and sent to the steer alley, and I didn't sell the steers.

Q. In your opinion, based upon your experience, how many carlots of cows and calves could you sell in a day, taking them just as they come to you, with the mixtures just as they come mixed?

Mr. O'Bryan: Objection——

Mr. Boyd: Wait a minute. I want to raise the objection

Mr. Examiner, that first I would like to ask this witness a question as to his knowledge of how they came to him to indicate whether or not he is qualified to answer that question. Do I have the permission of the Examiner to ask that question?

Mr. Miles: Perfectly all right.

The Examiner: Yes, sir.

Mr. Boyd: Do you know, Mr. Brotzman, how the cattle and calves that were mixed actually arrived during the course of 1932, what those mixtures were, the separations that were necessary, either with the cattle or with the calves, in order to effect a sale?

The Witness: No.

Mr. Boyd: I submit the witness is not qualified to answer.

Mr. Miles: Let me proceed with this. (Continuing.) On this particular Monday, you received a carlot, you say there were some steers, some cows and some calves, is that correct?

A. Yes, sir.

Q. Did you tell us how many calves there were?

A. I believe there were nine.

Q. How many cows?

A. I don't know; the steers were cut off and I didn't have the counts.

[fol. 1211] Q. Do you know how many steers there were?

A. No sir.

Q. Now, taking similar carloads throughout the course of a year, how many carlots arriving just as that carlot arrived, in your opinion, could you sell?

A. I couldn't answer that.

I think we render as good service as any other market agency on the yards. As to whether I am as good a salesman as any other salesman handling like stuff, I have never been asked to take a back seat for anybody. As to whether I mean by that that I am as good, I think I am a good salesman. And I think I am as good as the other salesmen on the yards. With reference to the other salesmen employed by our firm, the cattle salesmen, I think they average, in ability, as high as other salesmen employed by other commission men.

Q. Do you believe that they could sell as many head or carlots of cattle as any other salesman on the yards of like kind and quality, and arriving in the same manner?

The Witness: The other firm having the same grade of cattle with them, of course, there is no two firms handle exactly the same cattle at the same time, but giving, you might say, an even break, with the same grade of cattle I feel our men could sell as many as the other commission firms.

Mr. Miles (continuing): In your opinion, could your firm have handled more cattle during the year 1932, if you had had larger volume of receipts?

A. Could we have handled more cattle?

Q. Yes, sold more cattle.

A. Yes.

[fol. 1212] Redirect examination:

If I received a carload of cattle tomorrow, containing twelve canner cows, two cutter cows, two cows in between a canner cow and a cutter, nine thin heifers, one veal calf and four bulls, I cannot tell how long it would take to sell it on tomorrow's market. I cannot remember what kind of a market we had on June 16th, and if I could remember what kind of a market I had on June 16th, I could not tell you how long it would have taken to have sold that load because I may have to wait a half hour to get a buyer and the buyer could come in and buy all these on the first bid in a few minutes, and I might be peddling around there two hours; you cannot tell anything about it.

Q. Then, if you cannot tell me how long it will take you tomorrow and you cannot tell me how long it will take you to handle them on June 16th of last year, how can you be expected to tell the number of carloads that a salesman could reasonably be expected to handle, that being simply one carload of many varying kinds that were handled throughout the year?

A. I believe I told the Examiner I could not tell you that, what they could sell in a year.

Q. Then, why cannot you tell him?

A. On account of the market conditions and the class of cattle, all loads don't sort like this; some sort in more drafts than the other.

[fol. 1213] Q. Do you remember what the market conditions were last year from day to day?

A. No.

Q. Is it possible for you to carry them in your head?

A. Never try to.

Q. Is your memory as good as most salesmen?

A. I think so.

Q. Do you think any salesman could take the witness stand and indicate the difficulties confronting him during the past year.

A. I don't believe he could.

Q. Have you ever seen one that you thought they could?

A. No, I would like to meet one that had a brain that good.

Q. Is it not possible that different kinds of cattle meet with a different demand from day to day and from hour to hour?

A. It is possible, yes, sir.

Q. Is it not true that, or is it true that the number of truck cattle that you can sell, in comparison with the number of cattle arriving by rail, varies from time to time, according to the conditions which you meet in the transactions at the moment you attempt to sell?

A. That is true.

Q. You go out in the morning, thinking you will be able to sell what you received, but you find that even on that day, three hours in advance of the close of the market, you find that the situation is so changed that you would think it was an entirely different day?

A. It changes very rapidly some days.

Q. During the course of one day's trading?

A. Yes, sir.

[fol. 1214] Q. Do you think any man can remember or can be expected to remember those constant changes that take place on this market from hour to hour and day to day so that he may consider and weigh those conditions, in answering a question of the kind that Mr. Miles has asked you?

—. I do not think so; it would be too much for one man to remember.

Q. Then, you think that question is not susceptible of an answer?

A. That was the question of how much cattle a man could sell in a year?

Q. Yes.

A. I would not attempt to answer it.

Q. The work sheets of your firm contain several hundred

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sheets of various kinds of business that you handle, ranging from a few drafts as in the month of November, where you handled five cars only out of an entire month's business, which were sold in one lot, that is, sold individually——

A. Yes, sir.

Q. —up to cars that required the selling of each individual animal separately. Do you think it possible for you to begin to carry those conditions in your head, those mixtures and circumstances in your head, so that you could properly weigh and average out the hundred thousand cases probably that are contained in this record?

A. On last November?

Q. Yes.

A. No, sir, I couldn't do it.

Q. No, I mean for the year or for the month.

A. For the month either, or the year, it couldn't be done.

[fol. 1215] Q. Can you recall now on the witness stand as many as seven, the condition of as many as seven market days during the year 1932 and state the dates?

A. No.

Q. And describe the conditions?

A. No.

Q. Can you describe any single day concerning conditions, the exact conditions which confronted you on that day.

A. In 1932?

Q. Yes, and give the date.

A. No.

Q. If you cannot do it for one day, how could you be expected to do it for a year.

A. I do not see how anybody would expect to do it for a year; I could not.

Recross-examination:

Mr. Boyd on direct examination called my attention to twelve canner cows, two cutter cows, two cows in between and nine thin heifers. Let us take the twelve canner cows. The market yesterday for canner cows was $1.75 to $2.25. It was a rather slow market. We had canners yesterday to sell. I think Mr. Work sold all our canners yesterday. I do not know what time was required to sell them because Mr. Work sold all the canners yesterday; I had a gentleman here from the country and I was taking him around the

[fol. 1216] yards. They were sold before the day was over. Mr. Work also had heifers for sale yesterday. The next lot was two cutters. The market on cutters yesterday was just about like canners, a slow market. We had quite a few cutters for sale yesterday. I do not know how many. They were all sold in the forenoon. The next grade was nine thin heifers. The market yesterday on heifers was about steady. The next one mentioned was one veal calf. The market on veal calves yesterday was twenty-five to fifty lower with a fair demand. The next on the list was four bulls. The bull market yesterday was strong. We had probably ten or twelve bulls for sale. Mr. Hughes sold them. I do not know at what time they were sold. I think they were all sold in the forenoon excepting one.

Assuming that such a carlot as described to you that came in yesterday, a carload like that; there were two men selling those cattle, I suppose, Mr. Work—this is just a guess, I do not know how long it would take to sell those cows. I do not know how long he actually required in selling the cows he sold. Based upon my experience on yesterday's market, the two men selling the cattle, working on that class of cattle to sell them, based on my memory, I would not know how to answer that question, because, if Mr. Work had to go out and look for a buyer and maybe spend a half an hour [fol. 1217] looking for a buyer, that half hour is lost, and he brings the buyer down there, and he may not be buying cutters, and he has to go and look for another buyer and how much time it would require I do not know. They would be sold in one day, and I would expect those same salesmen to sell other additional cattle during that same day.

Q. And, if a farmer were to say to you that he had ten loads, each of the ten being the same described by Mr. Boyd, that he wanted to ship to you, and asked if, in your opinion, whether they could be sold on the next day's arrival, would you not tell him that, in your judgment, you thought your firm could handle these ten cars.

A. If they got in in the morning.

Redirect examination:

Q. Mr. Brotzman, during the month of January, 1932, the work sheets show that you had all told during that month, 16 cars of cattle in straight cars, single ownership, the first car contained 26 head, there was one owner and

one account sale and seven drafts; and the rest of the information I will give you in each case, there was one owner and one account sale. On the next car there were 21 head with three drafts, the next car was 36 head with four drafts, the next 41, two drafts, there were two cars; there were two cars containing 52 head with six drafts; there was one car containing 22 head with four drafts, one car containing 22 head with four drafts, there was one car containing 33 head with four drafts, there was one car containing 22 head with four drafts, one car containing 21 head with 16 drafts, one car containing 22 head with one draft, one car containing 23 head with four drafts, one car containing 38 head with eight drafts, one car containing 24 head with one draft. Do you know whether or not you sold any of those cattle?

A. They were steers, were they?

Q. I don't know, and there is no information available from which that question may be answered.

[fol. 1218] A. I cannot tell you today what we did last January, that is, which ones I sold, without looking up the records. If I could see the scale tickets, I could tell you.

Q. If you could see the scale tickets, you could tell which of the animals you may have sold?

A. Yes.

Q. And you have a straight carload in this case, twenty-one head, sixteen drafts, you had a straight carload, single ownership, and, in the case of twenty-four head, the last that I read you, you sold or someone sold in one draft?

A. Probably that was steers.

Q. Or that could have been anything else?

A. It might have been a straight load of cows or heifers, too.

Q. It could have been both, could it not?

A. It could have, but it is not likely.

Q. Now, in order for you to take into consideration the business which your firm did, would it not be necessary for you to take into consideration the sixteen carloads that you handled in January?

A. It would be necessary to take into consideration?

Q. If you were asked by counsel for the Government to take into consideration the conditions as you found them, they are some of the conditions that existed, are they not?

A. Yes, sir, those are actual conditions.

Q. And do you not recall any of the market days on any day in January?

A. No, sir.

Q. That would be a condition that you would have to estimate, you would have to know also, would you not, that during the same month you had straight cars in plural own-
[fol. 1219] erships that contained one single deck with fourteen head and two drafts, twelve head with three drafts, that you had another car that had thirty-four head, sold in two drafts, four head that sold in four drafts, that you had one carload containing twenty-two head with eleven owners, that you sold in fifteen drafts; that you had two cars containing forty-three head, forty-one of which were sold in twelve drafts, one was sold in one draft, that you had another car with twenty-eight head, twenty-one owners, ten drafts, and last car was thirty-five head, four owners, four account sales, and seven drafts; in addition to the information that I have just given you, you would have to have that information and be able to correlate that information?

A. I would have to see the scale tickets of those dates.

Q. As a matter of fact, don't you think you would have to see the cattle?

A. You could not see the cattle now?

Q. True.

A. You mean to corroborate those sales?

Q. No, on any future business that you would get which were composed of the animals as I have read them to you, the last animals, that in order to tell anything about them, you would have to see them, in the first place.

A. Yes.

Q. And anything you might say about those animals would be pure guesswork, until you could see them?

A. Yes, sir.

Q. And, until you could see them, it would be guesswork as to how long it is going to take to sell them?

A. You never can tell until they are sold how long it is going to take.

[fol. 1220] Q. And that the information in connection with Mixed No. 2, selling has still a greater variation as to the number of drafts which animals were divided into than the two previous classes, that there were 298 head, all told, that you had 119 drafts, varying with each shipment, and that on the same market days you would be compelled and

did sell cattle and calves that came in mixed shipments and varying mixtures, requiring, in the case of two hundred and ten cattle, ninety-five drafts, almost two animals to the draft, and that in the case of calves, there were 149 head during that month with eighty-six drafts; in order for you to estimate a carload of cattle, you had to take into consideration those facts and those figures, in addition to those previously given you, would you not?

A. Yes, sir.

Q. And, at the time that was going on, you would have truck animals that would come to your pens along with the kinds and classes of animals that I have described to you, would you not?

A. Yes, sir.

Q. In which, in handling ninety-nine head, you are required to make sixty-two sales—no, that is the total of the first column, ninety-nine head and sixty-two sales; the second column covering calves is fifty-nine head with thirty-nine sales, you would have to take into consideration those facts in addition to those previously stated?

A. Yes, sir.

Q. And you would have to weigh and balance out those conditions and those circumstances in addition to those already given to you?

A. Yes, sir.

Q. In order to not encumber the record, I will give you no more instances, and that, for each month of the year, you would have to consider in addition to those facts that I have given you for January, all of the other conditions [fol. 1221] that occurred throughout all the other eleven months, would you not?

A. Will you state that question again?

The Examiner: Read it to him.

(Whereupon the question was read.)

The Witness: Yes, sir.

Mr. Boyd (continuing): So that you would have a problem that would involve thousands of factors?

A. Thousands of sales to remember, anyway.

Q. And thousands of factors to be considered?

A. Yes, sir.

Q. And, before you could answer a question of that kind, that was put by Mr. Miles, you would have to come to some

kind of an average of all these varying conditions before you could begin to give a fair answer?

A. Yes, sir.

Q. And, in addition to that, you would be required and compelled to know the market conditions which confronted the salesmen when these sales were made, if you were going to say, "Based upon the experience of the past year?"

A. You would have to have a lot of that.

Q. Sir?

A. You would have to have all that averaged up, wouldn't you?

Q. What do you think?

A. I could not base any—I could not give any intelligent answer on that.

Q. Do you think you would have to average it up before you could give an answer?

A. I don't think I could give an answer on it, then.

[fol. 1222] Recross-examination:

Some of my employees are on a weekly basis and some on a monthly, three or four men by the year. The yardmen are hired on a weekly basis. Usually the salesmen are hired on an annual basis. Based on the last month, if business was good, and I needed another yardsman, have to have him, I would hire him. Yes, it would be based upon my past experience.

Mr. Edward J. Lawler, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 5552 Everett Avenue. Lawler Brothers was a partnership but I am the sole owner now. My brother died. Formerly we had a corporation with Van Norman, Lawler & Company, which was started twenty-seven years ago. After about the last fourteen years, after Van Norman retired, we bought them out, we operated it as a partnership, I think it was approximately fourteen years. I sell cattle and calves and generally manage the concern; employ all the help, make all contracts of employment. We have twenty-three employees. We have twenty-one and

then we have a man at the scales in the hog alleys and then we have a man at the chutes that checks the stock off; they are on our payroll. The twenty-one are fully employed.

[fol. 1223] When I was a boy about fifteen or sixteen years, I worked during the vacation months as an office boy for Clay Robinson and Company, used to carry tickets from the alley when the stock was weighed to the office and so forth. I then went to work for my brother for Evans Snyder Buell. That was continuously then, and after two years, yarded cattle and calves. In the meantime, selling a few here and there, and for probably two or three years sold butcher stock under him. Then worked for Charles Harding, selling stockers and feeders and calves for approximately four or five years. My brother, about this time, went in partnership with G. B. Van Norman, who had been in the business since 1874. There I sold calves and fat steers, the latter along with G. B. Van Norman. After that, we bought Mr. Van Norman out and have continued doing the same since. Selling steers mostly and supervising the calf sales along with other ends of the cattle, other cattle. Most of our steer business comes from Indiana, Illinois, Iowa and Nebraska. Most of our calf business comes from Wisconsin and Illinois. We have one of the largest calf business- at the stockyards. We had four steer salesmen besides myself in 1932, and at the present time we still have four. We have one selling butcher stock. I classify butcher stock as cows and heifers. John Mahoney sells the bulls, and the calves are sold by O'Meara and me. [fol. 1224] Mahoney helps along with the butcher stock, and also helps O'Meara in case we are short-handed. Jennings sells our hogs. He has no assistance in selling. Jesse Davis sells our sheep. I supervise the selling of steers. After the cattle are yarded we aim to go through them together and set a price on them. All cattle, even the odd ones, we go through them too, and then we have a general idea of what we want for those cattle, how the markets will be and what we think of them. Then, any one of the salesmen will take any buyer that comes along through any bunch or odd bunch of these cattle, I aim myself to show them as much as possible, but if I should be in another alley, and a salesman came along in this other alley, any one of the others would bring them through the cattle.

In the sale of steers, the other salesman and I worked along side by side all day long, and in the case of calves Mr. O'Meara and I handle them. Lawler Brothers probably receives for sale on commission probably every class of cattle known.

A very small percentage of the various grades and kinds of cattle that come in arrive sorted. Loaded together with all kinds and classes. The first work we do in getting livestock is to sort it. Then feed and water it. It is a common expression in our alley, we get lots of cattle from [fol. 1225] Northern Wisconsin and Minnesota—they say if anybody can sort those, they can make a watch. We have so many kinds of different calves, bulls, stock heifers, stock steers in one bunch.

Q. The work sheets covering your concern for the year 1932 cover an analysis of the business done by you showing the number of head, the owners and the drafts, and the various consignments received by you. The work sheets as you will observe are very extensive, however, I will call your attention to some of the different consignments; during the month of January, 1932, there were two cars containing 35 head of cattle, single ownership, by rail, that had one account sale and one draft; there was one car containing 30 head that had one account sale with eleven drafts; there were two cars containing 51 head that had one account sale and 16 drafts; there were two cars containing 52 head that had one account sale and one draft; there was one car containing 24 head with one account sale and ten drafts; one car containing 20 head, one account sale and one draft; one car containing 36 head with one account sale and two drafts; and one car containing 36 head, one account sale with 14 drafts. Now, in the case of mixed No. 2, single ownership, that means a car that contains cattle, calves, hogs or sheep, or any of those species except cattle and calves, which is considered as mixed No. 1—in the case of mixed No. 2 you have one single deck car that had six head of cattle, five drafts; you had ten head of calves with seven drafts; 49 head of hogs with 13 drafts; another car, a double deck car, containing 155 hogs, three drafts, 19 head of hogs in one draft; then you had another single deck containing eight head with four drafts; 29 head of calves with two drafts; eight head of hogs with one draft; ten head of sheep with two drafts.

During the month of January, you had by truck a consignment of forty head of cattle sold in two drafts, you had eleven head of cattle sold in five drafts, you had nine head of cattle which sold in four drafts, 34 head of cattle that sold in three drafts, six head of cattle that sold in four drafts, and a great many of one head that sold separately, one consignment, one draft, you have many that were two head that were in two drafts, there were many of four head that were in three drafts, and so on, and the same situation prevailed in each of the months of the year, not in precisely those numbers or those amounts, but the mixtures and the drafts varied from shipment to shipment, from day to day, and from month to month. Are you able to say why that sorting in those cases was necessary, without information——

[fol. 1226] A. Is this plural ownership or single ownership?

Q. Single ownership.

A. Well, it was necessary to sell them that way to the best advantage.

Q. But you don't know from that information whether those animals were steers or cows?

A. It would apply just the same.

Q. So you don't know whether you or any of the other salesmen sold them?

A. I would not know.

Q. Can you now recall the condition of the cattle market of the kinds and grades that you sold on the various market days of 1932?

A. The kinds?

Q. Read the question.

(Whereupon the question was read.)

Q. (Continuing.) For each of the days of that year?

A. No, that would not be possible.

Q. Can you recall the market conditions of the various grades of animals, I mean from memory, the condition of the market on any day of 1932 covering the various grades and class that you sold?

A. Not closely, no.

Q. Can you recall the length of time from memory that it took to handle any consignment of livestock that you handled in 1932?

A. Not an individual consignment. I know we had to carry many cattle for two or three days. That would be carloads. We very seldom carry any odd ones.

I cannot recall the number of days that we carried cattle over during 1932. I do not know the amount of sorting and selling that was necessary upon any of the consignments that I have had called to my attention, or any of the [fol. 1227] other consignments that go to make up this vast amount of sales. It is not possible for me to determine in advance of seeing the animals the amount of sorting that may be necessary for a particular market. I think it is not possible for anyone else to do it. I have no idea the number of animals that any individual salesman for our concern sold during the year 1932. I do not know the parcels into which those consignments had to be sorted for sale, and were sold during 1932. I do not know how many consignments all of our salesmen worked on during the year 1932, where two salesmen worked on the same livestock. That occurs very frequently. It is a daily occurrence. We do not keep a record of the work that is performed by each of those employees in the matter of selling. I do not measure the value of our salesmen in employing them by the number of carloads of livestock they can sell. That is not a fair basis in my judgment, to estimate the work of a man. I think it is not the prevailing practice at this stockyard to determine the worth of a man by the number of carlots he can sell. The sale of carloads as such are the exception rather than the rule with our concern. And the sales that I actually make range from sales of one animal up to sales of a carload, and in rare instances the sale of more than one carload at the same price. I do not think it would be possible for one of my assistant salesmen to show different pens of cattle to as many as fifty buyers and not close a sale.

It is sometimes true that I show a large part of our receipts and effect sales of very small number of animals. [fol. 1228] During the first few months of the year we started out with a low market. The summer months into the late fall, we ran into a high market, what we call high, cattle sold up around $10.25 to $10.35. From then on, we ran into a decline which was almost continuous until this spring. I find that livestock at the beginning of the year, the first of the year 1932, the month of January, that

on each day of a market I will find cattle that will range from the top price downward until you reach the lowest sale, and that between the top and the bottom will be live-stock that will sell five cents per hundredweight of the various grades and classes usually right straight through to the bottom. The smallest division in price per hundred pounds of a dollar is a nickel on any particular day. So that cattle ranging from nine to ten dollars would have twenty price ranges from nine to ten. And so on down with each *fron-* figure, you would have twenty variations for each dollar in price, so that if the price ranged from $4.00 to $10.00 you would have one hundred and twenty variations in price on the same day's market. Prices of the various grades and classes of cattle vary from day to day; and the demand for various classes of cattle vary from day to day and vary on particular cays. It usnally does. Yesterday, for instance, cows were stron-er and the steers were a quarter lower; competent salesmen must have a good memory. It is necessary for a salesman to [fol. 1229] carry in his head a great many details of transactions which he has that day, the money he bids and so forth. I carry the transactions of past performance only in those instances where I believe they will be of value. We do not have any idea how many of those cars you could handle in a year and handle them well.

Q. Do you have any idea how long it would take to handle the other grades and classes in the mixtures in which they come in carload lots? So that you could indicate to the Examiner or the Secretary the number of cars that a salesman ought to handle in a year to be an efficient salesman?

A. No, I would not be able to answer that.

Q. Notwithstanding the fact that you have had a great number of years of experience on this market and sold a great many cattle?

A. Yes, sir.

Q. Have employed a number of salesmen, have observed their work, and still you think you cannot answer?

A. No.

There was less income for 1932 than there was in the year 1931, which was produced under the tariff approved by the Secretary in 1923. There is actually less selling com-

missions and less buying commissions. The effect of the direct shipments, I would think, had quite a bearing on it. There was a reduction in general expenses for the year 1932 as compared to 1931. The net profits for the two years notwithstanding the drop in income was substantially the same, but the complete earnings were greater in 1931 than in 1932 from the fact of the salary end of it. I reduced my [fol. 1230] salary proportionately. We made a general reduction in expenses to meet the loss in general income. I reduced my salary and I reduced the salaries of my employees during the year. I did not reduce them in 1931. I reduced the items of advertising, travel and soliciting in 1932 over 1931. Auto expense was reduced. Local and miscellaneous entertaining was a small amount greater in 1932 than in 1931. Stationery, printing and supplies was much less in 1932. Our miscellaneous office expense was less. Horses and saddle was less in 1932. Our telegraph and telephone was less in 1932.

The salesmen of our firm are all authorized to solicit business under the rules of the Exchange. I decide when and where soliciting and travel will take place in connection with soliciting. I make the decision in each instance. I do soliciting myself as much as possible. Personally I solicit in Indiana and Illinois and nearby points. I go the end of the week usually. I pay the salesmen that are in my employ no more on account of the soliciting that they do. My salesmen are employed on an annual basis, and that is true in each case. They draw when they wish, weekly or monthly. We pay other employees that are not salesmen weekly.

I do not believe that I spend or that my employees spent any more money in the year 1931 or the year 1932 than should have been spent in the exercise of good sound business judgment. I operated our firm during the years of [fol. 1231] 1931 and 1932 on as little expense as it was possible in order to render proper service to our shippers. I might say our salesmen who go to the country keep a card of the railroad fare, gasoline, or whatever way they go, and their hotel expense and turn that into the office. We have done that in the last couple of years. The matter of travel and solicitation is carried in a separate account in our books, and it gives considerable detail as to expenses. After the expenditures are incurred, I make a careful examination to

determine whether or not in my judgment the expenditures are reasonable. I exercise a very careful supervision over that matter, and from the information I obtain from those inquiries I am able to say that those expenses, in my judgment, were both necessary, and the amount spent was not unreasonable. I think the same was true of the expense for travel and solicitation which was done in 1931. It is my opinion that the cost of selling the drive-in business in cattle as compared to the carload business is greater in the case of drive-in. I think we are getting a fewer number of cars that can be sold as carloads. The carloads that we receive are of necessity broken up into a larger number of drafts, necessitating a larger number of sales per carload, much greater now. That has been brought about by different methods of demand and more people shipping together in mixed carloads.

[fol. 1232] I was a member of a committee of the Chicago Live Stock Exchange that had to do with the presentation of material and testimony to the arbitrators during the year 1923. The requirements of the commission men during 1933 are much greater as compared with 1923. The rates which were fixed at that time as being fair and reasonable, was under much better working conditions than we are having at the present time. It requires a whole lot more work now to accomplish the same as it did in 1923. Livestock prices in recent months have been generally advancing. The livestock men are much more satisfied as regards the price. During all our period of time we have kept track of it, we have had only three customers who have complained about the commissions. We have kept track of them. I recall that during the month of July, 1923, cattle were selling around $7.00 and within four years after that cattle were selling at $14.00.

I feel that in a great measure the work of other cattle salesmen on the Chicago market, as well as my own work, determines the price that will be paid for cattle all over this country. I do not believe that the portion of my salary which should be charged to the service I render as owner, should be based upon what some other firm pays the manager who is not the owner, because, I, individually, take the risk that a hired man does not.

I feel that the profits of Lawler Brothers and Company may be attributed primarily to my own activities. I do

not believe that the use of capital, either invested or bor-
[fol. 1233] rowed, was a primary factor in the profits made by my company. If I employed a person for the purpose of managing the concern, and acting as its executive officer, and a cattle salesman, I would consider those two duties in employing such a man.

The variation in our expenses is not as great as our variations in our income from month to month. We have many weeks that we will lose considerably in our operations.

It would be impossible in the management of our concern to bring about a condition whereby our concern, which has a diversified business, can create income which will equal or exceed our expenses from week to week or month to month. That is for the reason that the corn fed cattle are pretty well marketed as we come into the summer, and the grass fed cattle are not ready to ship until along in September. It would be impossible to change either.

Q. You had an average of 642 cars for the salesmen of cattle including yourself, as against a market average of 392 cars, on the average for all salesmen.

A. Market average of 642?

Q. No, your salesmen, including yourself, sold on the average for the year 642 cars each, and the market average——

A. Each, oh, I see.

Q. —and the market average for each salesmen so engaged was 394 or your average was 248 greater than the market average. Have you any knowledge or opinion why [fol. 1234] your average was greater than the market average?

A. Well, like any other business, some are more aggressive than others.

Q. Sir?

A. Some are more aggressive than others.

Q. You do not employ your salesmen on the basis of how many cars the- can sell a year?

A. Never, never did.

Q. The average for each of your salesmen for each market day of the year, considering you had about 200 market days, would be around three, a little over three, three cars per market day. Do you feel that that average was ample to keep you and your other salesmen fully employed dur-

ing the year in the performance of the service which you render?

A. How are you running the truck business through there?

Q. That is right in there, carload equivalents.

A. Yes, I do then.

Cross-examination:

The business for our firm for 1933 compared with a similar period for the year 1932, receipts and net income, about sixteen percent less I would say for the year 1933. I think that the loss was neither greater nor less than the market.

It is not unusual to show a load of cattle fifteen times to buyers. I would not say that we often sell a single carlot, single ownership to the first buyer. It does happen right along. Most of the sorting occurs with mixed species. It is necessary to separate the male from the female of the [fol. 1235] yearlings and sell to two different classes of buyers now more than we used to. We used to sell them together. It very seldom happens in our business that several owners, two, four or six owners would ship in a single car where the kind and quality of the livestock would all be the same. When that happens we put them in separate pens. It is more satisfactory to our customers to handle them that way, as each has a different idea as to the value of his own stock. They are better satisfied with the results if they know that their livestock had been sold on their own merits.

A co-operative shipment coming in one carlot and of the same grade, kind and quality, would be handled in the same manner. We would not handle them as if they were owned by one man only. We would sell them in different ways, odd heads, we might leave them together, if they were just alike, but, if there is any number like six or seven, to one man, or five or six we would take those out and sell those separately. It would not make any difference if they were shipped by a manager of a shipping association. I suppose there would be about three hundred and fifty to four hundred cars of cattle received on the average day's market on any one of the first four days of the week, in the month of June, July or August. The addition of fifty cars of cattle would make a difference in the average day's

market. If shippers were to ship to our firm 50 carlots, [fol. 1236] we would accept them and try to dispose of them to the best advantage, naturally. We would be able to sell them.

Q. I wanted you to assume now that you and two others, you and two other salesmen had fifteen carloads of steers, single ownership, to work on, whether you believe that you three would sell those fifteen carlots per day on an average throughout the year for all market days?

A. Yes, sir.

Q. There is testimony in this record to the effect that one firm received but fifty carloads of cattle in a year; in your opinion should the rates be such as would give that commission man who received but fifty carlots of cattle a year, a wage or profit or salary that would keep him in business?

A. No, it could not be done.

Q. All right, then, what percentage of your total salary, income or withdrawal would you set up as being properly taken for the manager's duties?

A. Not over 20 per cent of it.

Redirect examination:

Q. Now, what kind of a market did you expect the salesman to encounter when you said he would sell fifteen cars every day of the year, or an average of five per salesman?

A. Well, you would have to take the average of the market as they come.

Q. Are you able on the witness stand to indicate for me what the average was they come?

A. No, I would not be able to.

Q. Do you have business arriving to your firm that will admit of the employment of a salesman so that they can sell five cars on the average per person per day of steers or other cattle?

[fol. 1237] A. Read the question, please.

(Whereupon the question was read.)

A. I would not think so.

Mr. Miles: Is that because you don't get them?

A. Well, primarily, yes.

Mr. Boyd (continuing): Well, if the business of your firm will admit or you think you would be able to sell, on

the average, 15 cars a day, why did you not sell them all yourself?

A. Fifteen cars?

Q. Because that average approximates two-thirds of all the business that your firm handled during the entire year with all of the force you had.

A. Well, it would not be possible to sell fifteen cars every day myself and do it justice.

Q. Would the total number of cars handled by your firm in cattle, all kinds, truck, rail and otherwise, was 4496 cars, fifteen cars a day for three salesmen amounts to 3,000 cars per year, assuming there are 200 market days, each and every day. Do you follow me?

A. Yes.

Q. Now, on that basis, do you believe that you had too many men working for you during the year?

A. Well, I know that we haven't.

Q. Well, if your men, if you expect, would expect your men to be able to handle and sell fifteen carloads per day, that is, every market day, why do you keep as many salesmen as you had in view of the fact that the average of your salesmen was 642 cars per year, or the average per market day of a little over three cars? Do you understand the question?

A. You had better read it.

(Whereupon the question was read.)

[fol. 1238] A. Well, we find it keeps us busy handling what we are getting, with the help we have got. I thought our range was higher than it is.

Q. Do you still think you could handle fifteen cars per day with the three men on each market day of the year.

A. Not in the way they come.

Q. What did you think you were answering, when Mr. Miles asked you the question. What kind of shipments were you discussing, and what kind of shipment did you have in mind?

A. I had in mind practically straight carloads of steers.

Q. And you had them in mind——

A. Not to any great extent mixed cars of steers.

Q. And did you expect those straight carloads of steers to be sold in one or twenty drafts per car?

A. Very small number of drafts.

Q. Do you have very much of that kind of business?

A. No, just a fair amount, I would say, from these records here.

Q. Then, you do not intend that your testimony shall be used for the purpose of indicating what your salesmen could reasonably be expected to do in handling the type of receipts that come to your firm?

A. No, I figured our percentage was higher than it is, I didn't know it would run so light.

Q. What were you basing your answer on, what you thought your salesmen were doing?

A. From the fact that we seemed to be busy all the time, early and late.

Q. You think that the amount of business which you actually did sell, the business, as it comes to your firm, constituted the capacity of your firm on most market days?

A. I would say on seventy per cent of the days, yes.

Q. When the buyers leave the market, the market day [fol. 1239] closes, is that not so?

A. Well, practically; you often have to go down and bring them out later, you know.

Q. But you do not regulate the closing time, but the time the market closes is governed by the time the buyers actually quit buying?

A. And the orders are filled.

Q. And the orders are filled, or you sold out, as far as that day is concerned, you finish when you sell out?

A. Yes.

Q. Now, how many of those fifteen cars of steers would you expect would be carried over from day to day if such a thing could transpire that you could get fifteen cars of cattle on each market day of the year?

A. It would depend on the market.

Q. Do you consider it practical or possible, based upon the years you have been managing a responsible concern, selling cattle at Chicago, that by any means a condition could be brought about, whereby you would have for sale as many as five straight cars on every market day of the year that would be sold in as low as 1¼ drafts per car?

A. No.

Q. Is it not necessary, in the conduct of the business at Chicago, to be able to have a force that will enable you to sell on a market day the grades that you receive to sell

them in the parcels necessary to sell them on your busiest days?

A. Read the question please.

(Whereupon the question was read.)

A. Yes.

Q. And there may be some days, you think about 30 per cent, where that capacity has not been reached?

[fol. 1240] A. I would say so, yes, that is, to get the full strength of the market.

Q. Now, you said to Mr. Miles that if you are out in the country and some ten owners indicated that they were going to ship fifty cars to you on a day and if they did ship them you would sell them, what kind of cattle did you have in mind then?

A. Well, it would be an unusual condition where you would have that; in fact, no one community would ship that number of cattle, fat cattle, at the same time; they know they would be working against themselves.

Q. That is a condition that is not reflected in this situation, on this market under any circumstances?

A. Under no circumstances.

Q. Have you ever had such an occasion as that arise?

A. I do not know of anyone that has had it; they could have had it in the days when the westerns were coming.

Q. Can you conceive that condition being applicable to the conditions confronting commission men today?

A. No.

Q. So you would think that that situation would never develop with you?

A. No, it would not.

Q. Or any other commission firm at this market?

A. It has not all the years I have been in business.

Q. There are a limited number of hours that a salesman has each market day, to perform his services, is that true?

A. Yes, sir.

Q. And that is limited, is fixed by him or by whom?

A. By the Exchange.

[fol. 1241] Q. What is that time?

A. Eight until three.

Q. Now between eight and three are the number of hours, maximum number of hours, seven, which a salesman may sell cattle?

A. Maximum, yes.

Q. Maximum. Now, that seven hours may be limited by either the arrival of the livestock or by the action of the buyers, is that not true?

A. Yes.

Q. Or it may be limited by the fact that the buyers fill their orders or the market is sold out?

A. Yes.

Q. Now, does it follow that simply because a steer is a steer, that that indicates the amount of time, effort and judgment that will be devoted in the sale of steers, as such?

A. None at all.

Q. Are there not as many distinctions, grades and quality represented in your steer receipts as in other receipts?

A. Practically the same.

Q. Now, to go back to your fifteen carloads which were discussed, and which I understand you to say could not be used as a basis for the determination of work that you could do or that each man could do, how many various grades and classes could those fifteen cars come in?

A. You mean of steers?

Q. Yes.

A. They could come in many classes.

[fol. 1242] Q. And the length of time that it will take to dispose of them or the number that could be disposed of on a day would depend first upon the number of owners, upon the grades and classes that went to make up the loads and the individual loads, the number of drafts of parcels that they would have to be sorted into, or the number of times you might have to re-sort them, would it not?

A. Yes, sir.

Q. As well as the market for the various kinds and grades of which that shipment would be composed, or those shipments would be composed, the markets could be slow or fast with reference to the various grades of steers that were in that shipment?

A. That would make a great difference in time.

Q. Or the reverse could be true?

A. Yes.

Q. All of which you would have to take into consideration to determine?

A. Yes.

Q. Did you do that, in answering Mr. Miles' question?

A. No, I did not.

Q. Then, what have you to say about the question and the answer?

A. Well, as I said before, I was considering fat steers only and for single ownership and practically straight carload lots, and furthermore, I thought our proportion was much larger than it shows here.

Q. And your answer was based upon a misunderstanding or a lack of knowledge as to what your actual performance was during 1932?

A. I would say so.

Q. And, in making the answer, you were considering, in part at least, your actual performance, or what you thought your actual performance was?

A. Yes.

[fol. 1243] Q. And about that you say you find you were mistaken?

A. I do.

Redirect examination:

Q. The orders indicate the method that they follow and in order not to read the exact language of one or the other of the orders, a performance or a standard has been set up in previous cases, that performance, as will be observed from reading the orders, does not specify the number of sales that have been required to meet that performance. Do you believe that rates should be determined on rail business, based upon the number of carloads in the case of mixed cars, you would have to take what they call the experience of the firm and take the number of cars and add them together until you reach what is called a carload equivalent and decide that salesman performance should be reduced to a carlot basis, or do you think the method of drafts which indicates the number of sales would better reflect the performance of a salesman?

A. I would think the number of sales or drafts.

Q. Why do you think that carload basis would not be a proper basis?

A. Well, the number of drafts constitute the amount of work that is necessary.

Q. Do you think, do you mean, by that, that the varia-

tion between cars would be so great that the carload would not be representative?

A. I think not.

Redirect examination:

Q. Mr. Lawler, I would like to get the record somewhat clearer with reference to your answer to Mr. Miles about the 50 cars which you said, which I understood you to say you thought your firm could sell next Wednesday. What kind of livestock did you have in mind that Mr. Miles was inquiring about that would comprise that consignment.

[fol. 1244] A. My thought was they could be sold——

Q. What kind of livestock, first, did you think Mr. Miles——

A. —you could not have anything else, but they would have to be all steers in that kind of a shipment; you don't have mixed shipments of those kind; practically, it would mean all steers, fat cattle, corn fed cattle.

Q. You said that 400 cars would represent a good day's business for the stockyards?

A. Of cattle, you asked me if it was running that way, and I thought it would run about 400 cars of cattle for the first four days on an average.

Q. I think Mr. Miles asked you about that?

A. Yes, sir.

Q. That would be 400 cars of all kinds of cattle?

A. Yes, sir.

Q. So that 50 cars probably would be more than the normal run of that sort of livestock, of good fat steers.

A. Yes, there would not be 50 cars of good fat steers out of that kind of a run.

Q. And 50 cars would comprise all of the animals for each day of the four days of that kind of stock on the market of all firms.

A. Of good to choice cattle.

Q. So that the question contemplated your firm alone selling all of the good to choice cattle that would be marketed on the first four days of the week.

A. Repeat that, please.

(Whereupon the question was read.)

A. Yes.

Q. In all your years of experience, that condition has never arisen?

A. No.

[fol. 1245] Q. How much prime livestock, prime steers are received at the market?

A. Oh, that is uneven, a few cars maybe a couple times a week.

Q. But it represents a very small proportion of the total receipts?

A. Very small, because, you see there are only a few prime loads coming at any time.

Q. And the most of them come around Stock Show time?

A. No, we have a few loads each week.

Q. But you get a larger proportion then?

A. A larger proportion are fed for the Stock Show time, yes.

Cross-examination:

I could not tell you from memory the greatest number of animals, that is, of cattle, that our firm has received in any one day this year, either carlots or by the head or both. As to whether I can tell you the greatest number either by carlot or by head that I personally sold any one day this year without any salesman assisting me, I have never sold any number of cattle without assistance, as I said before, we all work and show all of the cattle in my end of the business. I cannot tell you the greatest number, either by carlot or by head that one salesman assisting me and I have sold on any one day for this calendar year; I have never kept track of it. I could very easily do it, if I had been told it would be asked for and kept track of any day, I can tell that. I could tell that because we mark our tickets as we sell them, individually, and the other salesmen the same.

[fol. 1246] Mr. P. T. Dolan, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 7747 Union Avenue, Chicago. I am a partner of Dolan and Ludeman Company, doing a general livestock commission business at Chicago. I am the principal owner. My partner Mr. Ludeman died the last week of December.

Referring to sheet 1-A of the work sheets, Government Exhibit 16, which carries the payroll of Dolan, Ludeman & Company for the year 1932, the name and the number of the employees of that company and the type of service those employees renders is as follows: P. T. Dolan, owner, cattle salesman; F. C. Ludeman, No. 2, cattle salesman and owner; and H. Roll, 3, office manager; and W. M. Kirby, 7, at the present time he is laid up with a broken hip and has been for the last year or two; C. B. Auld, 6, yardman; R. B. Dwyer, 4, butcher salesman; Phil Foley, 8, yardman; H. A. Youngerman, 11, stenographer and general office work; Homer Dye, 5, hog salesman; and James Henlicki, 9, yardman and helps sell a few hogs too. Mr. Kirby was hurt some time ago around the stock yards in line of duty. He was standing in the cattle alley and fell on the ice and broke his hip. He has not been able to do a day's work since. The amount which is shown and which was paid was for past services.

[fol. 1247] Mr. Dwyer sells butcher stuff. Mr. Auld works in the cattle alley and is a yardman; Foley works in the hog alley or anywhere he is told to work. Mr. Dye sells hogs and Mr. Hendricks in cattle and hogs. Mr. Ludeman helped me in the steer alley a great deal of the time.

I started in as a yardman and have done practically every part of handling cattle since that time. I worked for Smith Brothers Commission firm. That is the only firm I was with. When I started in business for myself, I had been selling cattle for some time. I have sold all kinds of cattle and now devote most of my time to selling steers. If the occasion arises, I can sell butcher stuff. I have been selling cattle since around 1911 or 1912.

After I went in business for myself, I sold butcher stuff for several years. I started in helping Mr. George Smith sell steers.

We draw business from the states of Nebraska, Colorado, Texas, South Dakota, Illinois, Indiana, North Dakota, Montana, Minnesota, Missouri and Iowa. Most of our business is drawn from Iowa, South Dakota, Nebraska and Illinois. And most of our hog business comes from Illinois and Iowa. I exercise general supervision over the business, and employ the persons who work for the company. I also deter-

[fol. 1248] mine the salaries to be paid them.

Our truck business has been increasing more rapidly during the last four or five years.

I cannot give you exactly the parcels into which we have to sort our business from memory. I do not know the number of drafts into which we had to sort straight cars of cattle, in 1932. I do not know the number of drafts and the number of sales that were required in the handling of straight cars, plural ownerships. I do not know the number of drafts that were required in selling our truck business. I do not know the average number of drafts per account sales. I do not know the actual number of carloads of cattle that were sold by Dolan Ludeman during the year, or the number that came by truck.

We clear a firm by the name of Haime and Renecker. We have no written contract with them. Of the three hundred fifty six carloads of cattle and calves received by Haime and Renecker during 1932, I sold the steers and Mr. Renecker sold the butcher stuff. With reference to the 1653 cars that were consigned to Dolan and Ludeman, the service rendered by Haime and Renecker would be small. Mr. Renecker would help me out if I got into a place where I needed extra help. He might sell some of our butcher stuff if we happened to have too many that day for one man to sell and get rid of them. They would assist with the yarding and help with the water and things like that. There was no change in the firm of Haime and Renecker during the year 1932.

[fol. 1249] Q. The 1,653 cars that were consigned to you, according to the record, were divided as follows: 713 cars of straight cattle, single ownership; 339 cars of straight cattle, plural ownership; mixed cars, single ownership, 22; mixed cars, plural ownership, 25; drive-ins, or equivalents of 174 cars; your seconds were 380 cars, or carload equivalents, and, reduced to percentages, the straight cars, single ownership, was 43 per cent, as against the all-firm average of 54. Your straight car, plural ownership, was 20 per cent, against an all-firm average of 15. Your mixed car, single ownership, was 1½ per cent against a 25 per cent average, all firms. That is 1½ as against 25. Your mixed plural ownership, was 1½ per cent against a market average, all firms of 4 per cent. Your drive-ins were 10 per cent against a market average of 13 per cent. Your seconds were 24 per cent against a market average of 11½. In the selling of livestock, what proportion of your time is devoted to the selling of steers?

A. Practically all the time.

Q. And who practically all the time sells your butcher stuff?

A. Mr. Dwyer.

Q. Are you able to say or able to divide the number of cars that comprised your receipts of butcher stuff and the number of cars that contained steers only?

A. No, I am not.

Q. There is no distinction made?

A. No, I could not.

Q. So you are not able to say the amount of business which you sold and the amount of business that Mr. Dwyer sold?

A. I am not.

Q. Are you able to say the number of livestock that Mr. Renecker sold for you during the year?

A. No, I am not.

Q. Are you able to say the number of livestock that you sold for Haime and Renecker during the year?

A. No, sir.

[fol. 1250] I am responsible for expenses incurred by the company. They are incurred under my supervision. I am not able to state why the income and expenses exactly offset each other in 1931.

Hardly any of our employees solicit business. We have got about all the business we can take care of without soliciting. Very little soliciting is done. Our present force is busy most of the time handling the business that is coming to us.

I did make a number of trips to the country last year, almost every Friday and Saturday. The fact is I have to work almost seven days a week as it is. The trips to the country were for the purpose of answering calls that are written to me and sent in to me to come out and look at their cattle and see what sort of stock they have and advise them, after looking at the cattle, carry a mental picture of those cattle, and write them occasionally and tell them, in my judgment, when is the best time to come with them. They insist on that kind of service with me.

So that the money that is charged on the 1932 blue audit for traveling, soliciting, represents mostly all answering people's demands to go out and look at the stock. When responding to such requests, I occasionally stop at other

places where a neighbor will tell them I am coming out [fol. 1251] and they will tell him they want me to see them. A few times I have stopped there and solicited business. I send Mr. Dwyer out on trips of that kind possibly once or twice a year. And Mr. Kirby once a year, possibly. But most of that service is performed by me. I don't believe I have ever gone into a community the last five years that I have not been written and asked to come out. I have three different places right now where they have asked me to come, or at least two places that I have not been able to get to.

Q. I indicated this morning that the record disclosed that 43 per cent of your business is distributed to straight cars, single ownership. Now, in the straight cars, single ownerships, business, I find, from an examination of the work sheets, that during the month of January of 1932 you received 1,568 head of cattle in single ownerships which arrived in 69 cars, and that there were 179 drafts. Now in the month of January, for plural ownerships, you had, in January, 684 head arriving in 27 cars with 167 drafts. In July of 1932, you had 825 head of single ownership cattle arriving in 37 cars with 71 drafts. During the month of April, you had 238 head of plural ownership straight cars arriving in 9 straight cars with 70 drafts. During the month of August, you had, 1,367 head arriving in 56 cars, single ownership, with 148 drafts. In the month of February of 1932, you had 495 head arriving in 19 straight cars, plural ownership, with 135 drafts. During the month of December, you had 1770 head arriving in 76 single ownership cars with 150 drafts. During September of 1932, you had 682 head arriving in 25 plural ownership cars with 140 drafts. Now, during 1932, during the month of January, you had 126 head of cattle arriving by truck with 56 drafts. During the month of June, you received 560 head of cattle by truck, necessitating 131 drafts. During the month of February, you had 151 head of cattle arriving by truck, necessitating 59 drafts, and during the month of September of that year, you had 463 head, cattle, arriving by truck, with 153 drafts. I understand that it would be [fol. 1252] difficult for you to carry all of those figures in your head, Mr. Dolan?

A. It is not difficult. It is impossible for me.

Q. But they represent an illustration of the varying number of drafts for the varying number of head in the different modes of arrival, which indicates that the months vary, both as to the number of head arriving which are distributed to the various modes of arrival, as well as a varying number of drafts per head during the various months of the year. Can you recall, from memory the circumstances surrounding the selling of any of the livestock in the numbers and necessitating the drafts which I have indicated?

A. No sir, I cannot.

I cannot recall the kind of market that confronted me in the sale of livestock on any of the days during any of the months that have been enumerated. I don't recall the difference in the market from one day to the other that occurred during 1932.

As to whether I can indicate the demand for any class of cattle on any market day during 1932, I don't recall any particular instance. I cannot recall the details of the various transactions done by me during the year 1933, unless there was something brought up, some particular deal that I might remember right now; but, off hand, I cannot remember a thing about it and don't make any effort to. I can remember the circumstances of yesterday's transactions. As to how far back this year I am able to recall, at the present time, circumstances surrounding the market-[fol. 1253] ing of the various kinds of cattle which I sold on this market, this year, there is only one way I can answer that. There might be some particular instance that if brought to my mind, that I might recall it vividly, and there might be a thousand other cases I cannot recall a thing about. I don't make any attempt to remember them. The thing that I am most concerned about during the day's transactions is to get the last possible dollar I can for our customers; that is what we are paid for. I have not made any attempt to determine the differences in costs in handling truck business and car business. I have not attempted to determine accurately or otherwise the costs to me of handling any part of any of the business that is consigned to me for sale on commission. I have not attempted to determine what the office costs are or what the costs of the office may be for handling of straight cars or mixed cars. I figure that is up to the people that patronize this market.

They come any way they want to. My position is to give them the best service in return for that, regardless of how they come in or how they arrive. I don't know how many head of livestock or cars that Mr. Dwyer sold last year. If it was a vital question or factor in connection with the business, I would have to keep a record of it. I think Mr. Dwyer whenever he sells anything is capable of selling what he attempts to sell.

[fol. 1254] I haven't any spare time from day to day. I get down around seven o'clock, and call it a day when we get through, usually anywhere from five to nine o'clock at night. Our employees work as long as there is anything to be done by them. They show up in the office around six o'clock in the morning. The stenographer gets down around seven to seven thirty, and works like the rest of the boys. They work until the work is done.

Under the head of advertising there is an item of circulars. The stenographer and myself supply the information for the circulars. It carries information with respect to cattle, hogs and sheep. I supply the cattle information and the stenographer gets the information from the hog salesman and the sheep salesman to put in. I determine to whom those circulars shall be sent. Customers are the persons that are included on the list, mostly actual customers. Once in a while a man will write in and tell us he intends to ship to me and wants the information, and in that case, his name is put on the mailing list for a circular. We remove a name from the circular list in the main because they are shipping elsewhere to some other firm, or if the circulars are returned unopened, the name is taken off the list.

[fol. 1255] I presume the item of $157.80 described as specialties and novelties during the year 1932 would be mostly lead pencils. We give lead pencils to customers; the pencils have our name printed on them. We send market papers to our regular customers on request. I believe we would send all the papers we are requested to send. I would take it for granted that he is not getting the paper from somebody else, because two papers would not do him any good. I understand the Drovers Journal would not mail two copies to the same man. We would take the man's name off the Drovers Journal list depending on whether he is a man that feeds the year round or whether he feeds

just one load a year. If he just feeds one load of cattle a year, and disposes of that one consignment, he is not vitally interested in getting the paper until he gets another load of cattle. I judge we are sending approximately 1,000 customers the paper.

I would say that I am acquainted with practically all of our customers. I would have to refresh my memory to answer as to the shippers who have been shipping to me the longest time. I have quite a number that have been shipping to me for I think ever since I went in business, and to sort out a bunch, it would be a little difficult. I could give you the names, if you wanted.

[fol. 1256] Gus Rist, a South Dakota man has been shipping to me since 1911. He has not been handling the same kind of cattle; the last few years he has been handling a different class of cattle. He has been handling a better class of late. They are all fed cattle.

William Mess, an Iowa shipper, forwards mostly all good cattle and I don't believe he has shipped a load away from me since I started in business. Mr. Rist has not shipped an animal away from me since I started in business. I write a good many letters to my customers. Very little, if any, of that correspondence should be charged to advertising. Most of our correspondence deals with actual transactions and with advice as to marketing. Our circulars are mostly printed by the Drovers Journal, and are mailed on Wednesday night or Thursday. We used to have them once a week, but since times got hard we tried to cut down expenses, they go once in two weeks. We have done that for possibly a year. We have had inquiries from our shippers as to why they have not received circulars more frequently.

We have been criticized a little, for not sending them out weekly. Times have been extremely hard in these days and if you are going to pay your boys a living wage, you have got to trim your expenses every way possible, even sometimes when it looks like poor business to do it. We have an expense item for horse and saddle. We have two horses [fol. 1257] owned by the partnership. We keep the horses in a boarding stable. The cost in keeping the horses has declined a little. The horses are delivered to us and are picked up by the employees of the yard company when the day's work is finished. I usually get on my horse to go to

sell cattle around eight o'clock. I spend my time on horseback from then until about three o'clock in the afternoon. Very seldom have time to go to lunch, have a sandwich sent over to the alley and eat it while I am working. When it rains I stay out and take it.

It is an old saying in the yards that rain always has a tendency to slow up the market. The harder it rains and the colder it gets, the longer you are out. One day last winter we were compelled to stay out there at 19 below zero from early morning until 3 o'clock in the afternoon. I wouldn't go through it again if we had our commission rates raised twice, I don't think. I recall on that particular day that we did not effect a clearance. As to whether it takes longer to handle the same number of animals arriving by rail or by truck, it never entered into my thought. When we get anything to sell, I sell it for all I can get for it, regardless of how they come in and for the time given each animal or each particular shipment, I do not pay any attention.

[fol. 1258] Cross-examination:

I cannot tell offhand how long Mr. Dwyer has been with me. He confines his activities mostly to the selling of butcher cattle. I confine my time mostly to selling steers, some straight loads of heifers. I said Mr. Ludeman died in December, 1932. Mr. Dwyer and I have not been selling all the cattle since then. I hired a man. We hired him shortly after Mr. Ludeman died. I don't recall the month. He is Earl Leonard. He helps me with the steers. Mr. Leonard has been here quite a number of years. He was with the Northwestern Commission Company for awhile and also with the Iowa Livestock. He is not a partner in the firm. I think I pay him about the same as Mr. Dwyer. Mr. Leonard had some friends that shipped to him. I don't know to what extent. Mr. Ludeman when living helped me with the steers, used to sell, I believe, the bulls a part of the time. I don't know that Mr. Ludeman and I ever sold all the cattle consigned to us. He and I were in partnership around thirteen years.

The firm of Haime and Renecker is an individual proprietorship. Mr. Renecker does not employ anybody to work for him. For the last several months, Mr. Haime has

been almost incapable of doing anything. His health has been very bad. Instead of Haime and Rennecker being a sole proprietorship as figured, it is a partnership. Mr. [fol. 1259] Haime was his own boss. I didn't make much of an effort to find out what he does. He does not sell anything very often, I believe. Mr. Haime does quite a lot of help in the office. He helps the bookkeeper at times when he is feeling pretty good, he yards quite a few cattle, helps sort them. Our firm receives all species of livestock. I think I charge them around thirty per cent for clearing their business. My bond covers that firm. Mr. Roll is part owner. It is up to me to determine how much each of the partners will get. I decide that. Mr. Kirby used to yard some, used to sell some, a few head, occasionally, helping out. He was active all the time up until the time he got hurt, which was two or three years ago. He has not been able to render a great deal of service since. We still carry him on our payroll. If the State required industrial insurance at that time, I didn't know it. We have been taking it since and paying plenty for it.

Since 1932 I do not know how much I sold for Haime and Renecker. We sell all of his hogs and his sheep. Our sheep salesman is Aubrey Williams. He sells sheep for more than one firm.

Miles Dodd fits into our organization the same as Haime and Rennecker. Mr. Dodd receives all species of livestock. He sells his own steers. We sell his butcher stuff. Don't know whether his business runs more to steers or butcher stuff. We do all his office work. He doesn't employ anyone. We charge him twenty-five per cent. I would not say positively.

[fol. 1260] Seconds are handled the same as any other shippers. Our hog salesman sell- the second hogs. It seems to me he gets a little something for selling some of these seconds. I could not explain what that is for the record. It came up two or three years ago, and if I remember he asked me if he could get part of that commission, and if I remember right, I told him he could, and what it was, I don't know. If that is so, that is applicable to all seconds handled by us. I don't know what proportion of the commissions we give him.

We have seventeen or eighteen regular pens for handling steers and we have an overflow alley that the yard

company generally give us during the busy time. Some good neighbors around from whom we could borrow extra pens if needed. I could not tell you how many pens we have in our butcher alley. They are close together. Mr. Dwyer does the selling and sorting himself. I very seldom assist him in arriving at his judgment as to the price he will ask. I generally sell steers on my own judgment. We have pretty much the same force this year as last. I think the salaries are pretty much the same, but I would not say positively. As to checking the payroll for 1932 I would say that the salaries are the same now as then. I go to the hog alleys and sheep alleys very seldom. I could not tell you the last time I was in the hog alley. I exercise very little supervision over the hog salesman. I do not confer with him in respect to sorting or pricing his hogs. He acts on [fol. 1261] his own independent judgment. We employ our help on a monthly basis. We do not have a great deal of change in our clientele. I would say that when my customers ship to Chicago, they ship mostly to me. When Mr. Ludeman was living I did most of the managing of the firm. I don't determine at the first of the year or at any other time whether I am going to require the services of all our employees. The calendar year in my business is the same as the Fourth of July or any other day. I mean it runs about the same all the time. Most of our employees have been with us for quite a while. I would say I generally figure on using our employees the next month at least. I figure that on the basis of past performance, that is a guide to me in my judgment. I might say that Mr. Roll is substantially in the capacity of an employee. The division of the profits at the end of the year is up to me. Mr. Roll practically does nothing but office work. He does not make any trips to the country.

On my trips to the country I go by train. I never owned a car. I never had enough money to own a car.

When a shipper has asked me to come to the country, he generally meets me at the train and we go out and look at his cattle, and he expects me to take a good look at whatever he is feeding, and if he is ready to go right at that time, to tell him whether I think he ought to come next Monday or next Wednesday, or if they are ready to come in three months, he wants me to carry those cattle in my [fol. 1262] mind, if he writes me and asks me what that

class of cattle are selling for, and to give him some kind of an intelligent answer. He does not pay any of my expenses. Before I go out I do not know how much livestock a man has unless he tells me. If I thought he was entitled to any consideration at all, I would go irrespective of the volume. I have made those calls on our truck customers, quite a number of them. They are just about as touchy as the rest of them. They don't want to be slighted. I would not think that they used similar services from other commission firms on the Chicago market, as most of these people are pretty honorable men, and I don't think they would want to ask others to come out and duplicate the service. They ask the man to come out that they expect to ship to. I have no way of checking that up any more than conversation with them. I always get the livestock where I make those visits. There may be times when I would not, I do not recall any specific instances. Mr. Leonard's salary is determined, by considering the times we are going through, and what you think your business can afford. I don't know whether his employment by me was a promotion in salary, I think he was getting more, possibly. He was out of employment when I hired him. I think Leonard works a little bit more on the cheaper cattle. He is qualified to act independently; and believe the boy is all [fol. 1263] right. I don't recall any time during his employment when I have left all the responsibility to him. When I am away Fridays and Saturdays, Mr. Dodd and Mr. Leonard will sell the steers. He would sell them, but Mr. Dodd is an older man, and I think he would possibly confer with him a little before they would be sold.

A man called me up this noon from Western Iowa and said he had some hogs. I told him, "Under the system they are going under, you know as much as I would or anybody else. I would not try to tell you what to do with them."

Quite a few of our customers come with their cattle. They are around the alleys w-ere we can talk about any instance in regard to the sale. As to whether it would be of any importance for me to know how many Mr. Dwyer sold, I would not try to bother my brains with numbers. I am very poor remembering numbers and I would not make any effort to try to remember them, the number of cattle

he sold. The man that gets the business that we do would have to have a butcher salesman to hold our business.

As to the amount of business handled by Mr. Dwyer, being an important factor in the profitableness of his service to our firm; we look to the customer, not to us. We have to give service to the livestock men. I would not dare to answer what volume of butcher stuff I think our firm should have to warrant the employment of a butcher salesman, [fol. 1264] do not know how to answer it. As to whether Mr. Dwyer could handle more butcher stuff for us if we received it, I couldn't answer that either. Just the same as asking you if you could examine forty-four witnesses tomorrow if you had them. You don't know what conditions you would have to meet. You could answer that about as near as I could answer this one.

Mr. W. A. Peterson, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 6636 Harvard Avenue in Chicago. I am one of the partners of Peterson, Turnbull & Company which is composed of Mr. Turnbull and myself. I have been engaged in the commission business thirty-four years the 17th of last January, in the livestock commission business. Prior to that I had experience in feeding and shipping, buying of cattle in the country and hogs. When I first came to Chicago I sold hogs and handled my own hog trade through Bacon Dawson and Company. The partnership of Peterson Turnbull and Company was established in 1918. I sold hogs for ten years and then I went to the cattle alley after that, and have been selling cattle for twenty-four years. I have sold all kinds of cattle. I make a specialty of the butcher stuff, but help with the selling of steers, help sell anything there is in the alley. I now sell the butcher stuff. [fol. 1265] The only assistance I have in the alley in selling — from Charlie Beringer who sells the calves. Charlie Beringer and one other boy do the yard work in the cattle alley and we have one yard man in the hog alley.

We clear Lambright-Keyes and Huston, A. F. Steward, under the firm — of Steward and McIlhaney and Charles

Moberly. They constitute all the firms we clear. Lambright-Keyes and Huston is out of business now. Lyman Keyes is still clearing through us, since the first of the year, 1933. Does business under the name of Lyman Keyes Commission Company. We have different arrangements with each of these firms. The partners determine the policy of the company. The partners employ such help as is necessary. The partners have always decided what advertising shall be done; either Mr. Turnbull or I would decide when market papers will be sent and to whom they will be sent. We send it when feeders and shippers request it and where we thought that it was necessary.

We purchase memorandum books and lead pencils for advertising purposes; and those shippers' books and pencils carry our name. Either Mr. Trumbull or I write the circulars. Mr. Donahue supplies the hog information. He is our hog salesman. We send out a circular once a week, sometimes once in two weeks.

[fol. 1266] I make some soliciting trips. The work papers of the Government indicate that I spent $196.00 during 1932 personally in the solicitation of business. I went to the country to look at cattle, any time that I make a trip to the country that there was any charges on. I have made a lot of trips to the country where there were no charges because I was not soliciting business. I have got two farms down here in Illinois, I wish somebody had them. I do not charge the money spent in making trips to my farms. I made such trips to the country soliciting to look at cattle at the shippers' request. Sometimes I looked at other people's cattle on such trips.

Q. I have before me the recapitulation of the analysis of the commissions and other statistics contained in the work papers of the Government for the year 1932. They divide the business into that which arrives by rail, that which arrives by truck, and the business that is sold for speculators. The rail business is divided up into single ownership cars, that is carloads of cattle and calves, having but one owner; it is divided also into plural ownerships, that is, where they have more than one owner; then they take up mixed cars, single ownership, which contains cattle, calves, hogs or sheep, or any of them except cattle and calves, and then plural ownerships the same way, and they give the number of head, the number of owners, the account sales,

and the number of drafts, and that is given for each month separately during 1932. During the month of July of that year, Peterson and Turnbull had a total of 398 cattle arriving in straight cars with single ownership, there were eight owners, eight account sales and 23 drafts. During that same month you had 91 head of plural ownership with four account sales and four owners and ten drafts. During the month of October you had 506 head of cattle, single ownership in straight cars, with nine owners, nine account sales, in 29 drafts. During October, you had 729 head of plural ownership cattle with 76 owners, 76 account sales, and 274 [fol. 1267] drafts. During October you had 438 head of cattle by truck with 112 owners, 112 account sales and 226 drafts. Do you follow those figures generally?

A. Yes, we have a record of all of them there.

Q. During November you received by rail, single ownership, 549 head with 19 owners, 19 account sales and 61 drafts; during November you received 225 head in plural ownership, with 25 owners, 21 account sales, and 70 drafts; during January you had two single deck cars and one double deck car of plural ownership, mixed No. 2, which contained 34 head of cattle with four owners, four account sales, 15 drafts, five head of calves, two owners, two account sales and two drafts; 37 head of hogs with one owner, one account sale and two drafts; and 239 head of sheep with one owner, one account sale, and two draffs; during the month of February you had four single decks, plural ownerships, mixed No. 2 with 25 head of cattle, with 14 owners, 14 account sales and 22 drafts; the cars also contained 24 head of calves, eight owners, eight account sales and four drafts; 215 head of hogs with nine owners, nine account sales, and ten drafts. Do you believe that that is illustrative of the number of account sales, owners and drafts that you are required to sell your livestock in for the account——

A. Yes, I do.

We find that we work constantly during the market hours of the day to dispose of the cattle that are consigned to us for sale; that is the big end of the time. There is sometimes that it is easy that you do not take all day on a slow, draggy market; you can be there from morning until closing time.

It would be pretty hard to tell all the different kind of market days in 1932. We had many different kinds of days.

[fol. 1268] I could remember the kind of a market that we had on some days if I had the bills in front of me to refresh my memory that something happened would bring it all back to me. I could not take any day, and tell you the market, whether it was fast or slow, or steady or otherwise on any of the class of butcher stuff that I may have sold on that day during 1932. I could not take the vast amount of sales that I have made and be able to tell now the number of hours that were required in handling any of the consignments.

Before the Stock Yards Company enlarged the chutes, we had about twenty pens for butcher stuff. They are using about half of them, they are using part of the pens in the back alley for cattle off the trucks. We have got more room down in the steer alley and have to use many of these steer pens for butcher cattle now.

As to the time of receipts of cattle arriving at the yards, both rail and truck shipments, drag out through the day. That necessitates our receiving cattle into the alleys and remaining until the market closes, in an attempt to dispose of late arrivals. The late arrivals will take you out to the yards again if you have gone to the house anyway.

Q. The record in this case, Mr. Peterson, indicates that your firm sold, of all kinds of arrivals by truck or by rail, large and small consignments, reduced, in the case of truck business, to a carload equivalent, taking a certain number of cattle that arrived by truck and dividing that by the number of cattle which your firm received in each average carload and thereby reaching an average of a carload by truck and using that basis, Peterson and Turnbull sold an aver- [fol. 1269] age throughout the year of 329 carloads of cattle and calves, as against an average for the entire market of salesmen, cattle and calves, 394, and that includes the firms that you clear as well; do you find that on the market days in 1932, as you now recall, that you were busy selling butcher stuff most of the market hours on most of the days or not?

A. Why, yes, I would say we were, on most of the days.

Cross-examination:

Most of our shipments originate in Montana, the Dakotas, North and South Dakota, and Iowa, Minnesota, Illinois and Indiana. I would state that probably the Illinois trade

was possibly the largest. Our receipts of cattle as a general thing are heaviest the first four months of the year. I could not tell what proportion of our receipts were received in the first four months of the year.

I cannot tell the largest number of cattle that we have received in a single day during the present calendar year 1933. Most of the time we sell the cattle we receive on the day of arrival. Once in a while we get in a place where we cannot. I would not undertake to tell you how many days we have carried over livestock during the calendar year of 1933. I am not going to make a guess at it with respect to 1932. It happens quite often. They get the cattle sold on a fast market most of the time, it has been very slow and draggy ever since the first of the year, day in and day out. I cannot tell you how many days we carried cattle over during the month of July of this year. I think I carried over three heifers last week, but do not know the receipts for the week. I would have to go to the books for that.

[fol. 1270] Mr. Donahue actually sells all the hogs that our firm handles on behalf of these parties that we clear. He has bought some hogs for them. He has bought whatever was bought in the last ten years.

I cannot answer that in our judgment our firm could sell more live stock than we are now selling if we received them.

There are four busy days in the week and Friday you have to get through by noon, because you would not have anybody to sell anything to after twelve o'clock.

Q. It appears from some records that on June 4 and 5th, you received one car of cattle and two cars of hogs. That does not include trucked stuff. In your judgment, how long a time was actually required or would be required to sell the one carload of cattle and the two cars of hogs?

A. I could not answer it. I answered long ago that I could not answer it.

Mr. Miles (continuing): The record shows also that on June 7th you received seven loads of cattle, do you recall whether all seven loads were sold on that day?

A. I could not tell you. I would have to go to the records. I did not bring any of those with me.

Q. And you could not approximate the time required to sell them?

A. No, sir.

Q. Could you approximate the time required to sell seven loads on a fast market?

A. Not if a man had a conscience, no, he couldn't.

[fol. 1271] Q. Mr. Peterson, in your judgment, is it any more difficult, does it require any more time today to sell a straight carload of steers which require no sorting than it did five or ten years ago?

A. That cannot be answered.

I would say that it should not take any longer to sell a truck load of cattle than a carload, if there was no sorting on them.

Mr. Peterson returned to the stand with the account sales for his firm for the month of June.

The five loads on June 7th that you asked me about. Our account sales show that there were seven cars of cattle and calves, four consignments, and 177 head. Then, there were eighteen consignments by truck, and 48 head. The total was 225 head with 56 drafts. I also have with me the scale tickets covering the transactions. Mr. Steward and I sold all of the cattle and Beringer sold the calves. Steward sold 47 of the cattle and I sold the balance.

Redirect examination:

Covering 118 head sold by Mr. Steward, there were thirteen sales. I sold the balance of 105 head. It required 43 sales for me to sell the 105 head. The calves were all sold to one buyer. I sold Swift account of Hammond cattle covered by five scale tickets; Siegel Weller, three tickets; Foster, two; H. Hatch, one; Howard, one; Krushbaum, one; M. Livingston, two; Eddie Monarque, two; Wilson buyer ten; C. Correll, two; Libby McNeil and Libby, three; Murray, one; and Huffaker, one; and the United Dressed Beef, [fol. 1272] one bunch. I can only remember the number of buyers that we showed those cattle to that did not buy them, and the bids made on them, only in this way; that Armour and Swift buyers all had a chance to buy these cows that Wilson bought. Swift only bought those few Hammond cows and a few Swift cows. Wilson never had a chance on them, they were sold before he had a chance, but Armour bid on all of them and did not buy any of them, and I had speculators, I don't know how many. I sold a few to Correll

and a few to Monarque. On the cattle that Wilson got, why, Armour and Swift were both on them before Wilson was. The only unusual thing about that day was the fact that we had a large number of consignments that sold together instead of having to break them up in little pieces; there were 37 in one, and 27 in another and 45 in another. It is one of the unusual things, might have had ordinarily 47 cattle, you would have to break them up ordinarily, but they were uniform and all of one type, a fancy little bunch of yearlings topped the market that day for their weights, light weights. That was the hottest day we have had this summer. The cattle died all over the yards and that afternoon Armour lost twenty some odd; Swift lost 29 after they were weighed, Wilson lost some, pretty near everybody lost some. The fills were large. There were not any cattle started toward the scale before 12 o'clock that day on account of the fill and they were waiting and waiting, and when they moved them they lost so many of them, got them hotter than ever.

[fol. 1273] Recross-examination:

June 7th was a fairly active market when they started, but they did not begin until around noontime. They were waiting for the water fill to get out of the cattle, and just sitting around, did not do anything. It did not take long to sell them after they commenced to go.

Mr. Arthur L. Donehue, a witness called by the Respondents, testified as follows:

Direct examination:

I am a hog salesman for Peterson, Turnbull and I live in Chicago and have been selling hogs approximately fifteen years. I worked for Bacon Dawson and Company, predecessors of Peterson, Turnbull and have been working there ever since. I started out as yardman, stenographer and bookkeeper. I sell all the hogs that are consigned to Peterson, Turnbull if I am in the yards. I also sell the hogs of Charlie Moberly and Company and Steward and McIlhaney. Our whole business comes from Illinois, Iowa, Wisconsin, Indiana. We get our business in Illinois within a radius

of 200 miles, mostly from down toward Bloomington and Granville and that country.

I went out to solicit business once last year. I went down in the vicinity of Bloomington, Illinois, I was gone four days.

[fol. 1274] This year I have been out soliciting once or twice, and that would be only for a day. I would go to attend a funeral and would register out in case I ran into any of our customers. I have no help in selling hogs. I have a boy up there that helps yard, and if I am absent from here, Lyman Keyes sells my hogs. Lyman Keyes sells all the hogs that are consigned to him when he is there; when he is not there I sell his; we work together that way.

The bulk of our hog business is sold in lots less than a carload. The sales run from one head up. I do not recall the hog business that I sold last year, was actually sold, the number of drafts that were necessary to dispose of the business. I don't remember the number of straight carload sales I had that did not require any sorting. I cannot recall the condition of the market on the various days of last year. I cannot recall the kind of market that we had this year with reference to any particular day without going back and looking up the record. I can remember the market this week, and I could last week, I think I could. Last year we had all kinds of markets, ups and downs, slows and fast, different days. It does not always follow that our business transactions are made in the manner that the consensus of opinion was or is for a particular day.

[fol. 1275] Mr. E. L. Vaughan, a witness called by the Respondents, testified as follows:

Direct examination:

I am president of McCausland Hoag and Vaughan, a corporation organized under the laws of the State of Illinois, and am one of the principal stockholders. I own all but ten shares. I assume the general management of the firm, and sell cattle, confining my activities principally to steers and yearlings. We have three cattle salesmen besides myself. They are James A. Bell. F. W. Sullivan and

J. A. Goble. Mr. Goble has been selling for us since January, 1933. In 1932 the cattle were sold by Mr. Goble, Mr. Bell and myself. Mr. Bell is one of my assistants. He is employed on an annual ba-is and assists in selling cattle. The reason for employing an additional cattle salesman in 1933 was to cope with existing conditions, the change in the business, when it took more help, and I was compelled to employ him to protect myself and my firm. Off hand I would say that our business is not as large as in 1932. I think we are getting a smaller number of head to sell than the first six months of last year, but notwithstanding that fact, we had to take on an additional salesman.

I have been selling cattle on the Chicago market twenty-eight years. Before coming to Chicago I was connected with a livestock commission house in Kansas City for five [fol. 1276] years, two years at St. Joseph, and since 1900 have been in Chicago. I sold cattle on the St. Joe market but not on the Kansas City market. I was pretty young at that time. We sell cattle from all parts of the country where cattle are fattened for market, and I would say Illinois leads in the number of head that we sell. We receive cattle for sale from most western states; and southwestern states.

I account for the fact that during the month of April, 1932, our commissions, gross for selling were $6,500, for May $3,800, June $3,300, and in September, $4,000, from the fact that while my firm is not the largest firm, we have some of the largest cattle accounts coming to Chicago and it was during those months where a larger gross commission is shown that we received cattle from these large operators who market them in the spring.

Off hand I would say, "no" I am not familiar with these statistics prepared by the Government made from an analysis of the account sales of our company.

Q. The work sheets for your firm, which are a part of Government Exhibit 16, indicate that during the month of April, which was the month in which you had the largest gross commissions for 1932, you received 236 cars of cattle in straight cars, single ownership, amounting to 6068 head from 124 owners with 424 drafts, or approximately 15 head [fol. 1277] to the draft. Now, during the same month of April, you had 609 head of cattle that were driven in owned by 116 people with 230 drafts or less than 3 head per draft.

Now during the month of May, you had 135 carloads with 3,489 head, single ownership, from 74 owners with 266 drafts, and in the same month, you had 235 head of cattle which were driven in with 58 owners and 121 drafts, or about 2 head to the draft. During the month of June, you had 1,897 head by rail in 73 cars with 43 owners and 222 drafts. In the month of June, you had less than one-third of the number of cattle by rail that you had in the month of April. In the month of June, you had 680 drive-in cattle with 194 drafts from 92 owners, a little more than 3 head to the draft and nearly three times as many as you had driven in the previous month. During the month of March, you had 5 single deck cars, Mixed No. 2, which includes cattle, calves, hogs and sheep, but does not include cattle and calves only, and those five cars contained 47 head of cattle from one owner requiring 23 drafts, a little over 2 head to the draft. You had also in that same 5 cars 39 head of calves from one owner, necessitating 10 drafts, or 4 head to the draft; you had 265 head of hogs from two owners, requiring 17 drafts, you had 8 head of sheep from one owner sold in two drafts. During the month of June, you had 8 carloads, mixed No. 2, containing 168 head of cattle from two owners, necessitating 36 drafts; also 32 head of calves from one owner, necessitating 15 drafts; 224 head of hogs with two owners, necessitating 20 drafts. During the month of July, you had 9 cars of Mixed No. 2, mixed by rail, containing 78 head of cattle from two owners, necessitating 14 drafts; 34 head of calves from two owners, with the same number of drafts, 14; 239 head of hogs from two owners, requiring 33 drafts; 225 head of sheep from two owners, necessitating 19 drafts. Are the conditions, as reflected by the varying ways in which your business arrives as indicated from the figures just read to you, the reason for the necessity of taking on, or one of the rea-ons for the necessity of taking on an additional salesman?

A. You are correct.

[fol. 1278] Q. Have you found that the business, as it comes to your firm, requires a greater number of drafts which represent individual sales to dispose of the same number of livestock than it did several years ago?

A. It does.

That condition was brought about as far as our business was concerned, I can express it this way: we used to con-

sider that we did a wholesale business, but, we are down on a retail business. The cattle have to be sorted in various ways to put them in proper market condition or shape, and we have to show them to many different buyers and it takes much longer to effect sales, that is, sales that we consider the true market.

Q. Do you think that the business which you received in cattle during the year 1932 represented the full limit of the capacity of you and your assistants to sell cattle at their market value as confronted by you throughout that year?

A. I considered that my expenses are reduced and employ no lost motion and only take on men where I find it absolutely necessary for the proper conduct of my business.

Q. During the year 1932, the cattle salesmen with your concern, including yourself, sold 709 cars per salesman on the average. You have no way of knowing now the number of cattle that you sold or the number of cattle that any other of those salesmen sold throughout the year?

A. Well, I sell the bulk of them, but the records will show that proportion. I have not those figures at hand.

Q. Is there any record that you know of which would reflect the exact number of cattle that you sell or the exact number that other salesmen sell? The work papers do not contain them.

A. No, we work together, my assistant sells some of them under my supervision and we sort the cattle together and [fol. 1279] I help out, selling the cow stuff at times, and there is no record kept of the exact number of species or head that I sell, personally, or any other man that is with me.

Q. Have you found that during the first six months of this year that, with the additional help, you are able to perform your duties any better than you did with three salesmen last year?

A. I certainly do, or I would not employ the extra help.

Q. You figure that you and the other three salesmen are using as much time in the disposition of the receipts this year as you and the two other salesmen used in disposing of them last year?

A. Yes, sir.

Q. On the basis of your last year's receipts, using four salesmen, your average would be 532, dividing the receipts by four instead of by three, as against a market average for

all agencies on the market of 394 carloads on the average.

A. I think that would be correct.

Q. Do you have, among your patrons, a class of shippers that ship considerable quantities of straight cars, necessitating a fewer number of drafts when that class of business is moving?

A. I can recite one customer who markets 6,000 cattle a year. His cattle are usually weighed in from one to two bunches, but if these cattle come in each day, there is no single load or bunch that comes in but what have to be sorted and put in packages suitable for the trade.

Q. But, the class of shippers that are feeding the number of cattle that you speak of are very rare who market their cattle on this market?

A. Very, very few.

Q. So that you have to maintain a firm, in order to dispose of the job lots, into which you have to grade your receipts from day to day?

A. I do.

[fol. 1280] Q. Is that illustrated by the fact that during the month of May, where you had 6,098 cattle, as I recall the figures, with 424 drafts, or 15 head to the draft, is that the kind of business you would refer to?

A. That was the month that one of my large shippers was marketing the most of his cattle, and they were weighed virtually in loads or two loads or three loads.

Q. Can that kind of business, in your judgment, serve as a criterion for the number of carloads of livestock that a salesman ought to be expected to sell on this market from month to month or from day to day?

A. It cannot.

I do not employ our salesmen on the basis of the number of carloads of cattle that they can sell in a day, or a month, or a year. I hire them by the year. My first requirement as to the qualification of a salesman that I employ; he must be experienced, having many years of experience, and be well known as to trading ability, honesty and to hustle. I do not expect those salesmen to sell, when I make a contract with them, any particular volume or volume of carloads. They are hired for the work that they can handle.

I do not believe that a carload as such is a proper basis for arriving at the amount of work that a salesman ought to do; there are no two cars alike and you can sell no two

cars alike. There might be the same price, but you have got to get different buyers, and sort your cattle.

A scale ticket represents one individual sale but it might be the efforts of three or four salesmen. Three or four salesmen may work on the same draft. As to what I think more nearly represents a proper distribution of time de- [fol. 1281] voted in sales effort, carloads sold or drafts disposed of; I don't think you can make a distinction there because sometimes a carload can be sold readily and sometimes it takes longer to sell a carload than it would eight or ten smaller bunches, and it could also be true that it would take maybe eight times as long to sell eight smaller bunches than it would to sell one. The market conditions, including the demand, governs that situation.

If I were choosing one or the other as indicative of the effort that we put forth from time to time, I would say that the scale tickets and the number of those scale tickets, which indicates the number of drafts, more nearly represents the time used in selling than the number of carloads in which they arrive.

I am familiar with the view of the shipper who ships me some five or six thousand cattle with reference to the charges which I collect. I have discussed that question with him. He feels that it is a reasonable charge, and I have never had one kick from these various large shippers relative to the commission we charge.

On the large consignments, we usually know they are coming from the fact that the people telephone us or write us, and on the smaller mixed stuff, cows, what we call mixed carloads, we don't receive so much advice in advance. They drop in any time they feel like shipping. Taking a line through our general receipts, our business runs more to [fol. 1282] steers and yearlings than the lower grade of livestock. They vary from day to day and from month to month, and our truck business varies from day to day and from month to month. Some days we will have large rail receipts and a proportionately small run of truck arrivals. Perhaps the next day or the next week we will have the reverse condition.

As to whether there is any way I can bring about a more orderly condition of receipts to enable me to more evenly divide our efforts as salesmen on the market, I can only speak for my firm. I learn the estimated receipts and if

the receipts look large, I certainly try to have the people with the big shipments on hand check their big shipments and possibly send in two to four loads or none at all. I do that to protect them on the market and also to, as far as I can, protect the general market from heavier receipts, which would work against the shippers. But notwithstanding that fact and the efforts I put forth in that direction, it is not possible to operate it and serve the people that we serve and bring about a condition which will produce a profit each month of the year. There are positively months, June to October in which the expense will exceed the income and that has been true covering my entire experience in the commission business. It cannot be overcome; I am compelled to maintain that force which will enable me to efficiently dispose of livestock which we receive during the period of our largest receipts, and in order to do that, there [fol. 1283] is some time in the light seasons when receipts are low in which there may be some time which is not as fully devoted to the sale of livestock as during the period of heavy receipts. It is impossible to do otherwise.

J. A. Bell has full charge of the butcher stock department which includes cows, calves and bulls; and the two men working with me, steer salesmen show the cattle under my supervision, show some particular bunch of cattle suitable to some particular buyer at a time when I am working on other cattle, and our time is taken up working together all the time. We have cattle on the market, and in addition to this, each and every one of us sort cattle, put them in proper shape to appeal to the buyers.

$46.50 represents the entire expenditure of our company for travel and solicitation during the year 1932. I did the soliciting, the road work myself, and for the reason that I had no one else to do it and my purpose this year, in 1933, in hiring another man, was to do that work for me. I found that other firms were doing it and I was compelled to do so myself for my own protection. We spent about $600 less in 1932 than in 1931 for advertising, which includes market papers, circulars, postage, specialties and novelties. During the year 1932 I cut down on my advertising, such as circulars, postage, whereas the year before, I think the books [fol. 1284] will show that we sent a circular nearly every week, and, we did not do so in 1932, and also cut down on the Drovers Journal which is a market paper. I found it

necessary in managing the business of our corporation to reduce the salaries of non-owners from 1931 to 1932. The business did not justify the salary I was paying them and I cut them down. I mean the net results of our operations did not justify the salaries paid in 1931. I tried hard enough to reduce the rent, light and heat, but I could not do it; I was on the committee and tried to get them reduced and we got thrown out so we could not reduce it. We spent less for stationery, printing and supplies in 1932 than in 1931. I do not sell cattle on horseback. The item of "Horse and Saddle" of $90.00 in 1932 covers the time I was buying stockers and feeders and it was quite a way up to the feeder alley and I used a horse during that time, during several months that I was buying stockers and feeders. As to whether I find it of advantage to sell cattle on foot rather than on horseback, as far as my business is concerned, I was saving $530 a year by footing and I like it pretty well on foot. I started to sell cattle on foot about ten years ago.

Cross-examination:

Mr. Quinn is secretary. He holds five shares of stock in my company. James A. Bell is in charge of the butcher [fol. 1285] alley department. He has five shares in the corporation. Mr. Bell sells cows, calves and bulls. Two other salesmen and I at the present time handle steers and yearlings, which includes yearling heifers. I stated all three of us work together. I might be showing a load of cattle in one end of the alley to some packer buyer and I would see a shipper coming along who might have an order for a particular load of cattle in the other end of the alley and rather than let him get by and get away from us I would sic the other man on him and make him show the other cattle.

They get the best bid and they usually consult me before they sell them.

Mr. Sullivan was an order buyer for various packers fifteen or twenty years ago; he speculated some; and some five or six years ago, he entered my employ and after being there a couple of years another firm bid for his services and he went with them for three or four years and he came back to me the first of the year, in 1933. In other words, I hired him back. I do not assign him any livestock to sell, he just works with me. In addition to his services, as sell-

ing, I found it necessary to employ him to make trips to the country where it is impossible for me to do it. I cannot leave my alley full of cattle and go to the country and look at cattle or solicit business. And I am not now relying on him chiefly to do that soliciting.

[fol. 1286] Mr. Bell and Mr. Goble very seldom make trips to solicit. Mr. Goble makes various trips to the country. Mr. Bell very seldom does. Mr. Goble confines his trips principally to his home town and vicinity. He has been with me, I think, five years. His experience in the commission business has covered possibly forty years. Before going with me, he was in business for himself. He has some following of his own, I don't know how much. The books would show. I pay him salary and one-half commission. I mean by "one-half commission" on the business that he gets; it comes from his immediate territory where we know it is his. The large operators who are customers of our firm, are my friends exclusively. I don't hesitate to name them. The Midwest Canning Corporation, a branch of the California Packing Company, average 6000 cattle a year. H. K. Funderburg of Belvidere, Illinois, marketing an average of 2500 cattle a year; the Aetna Insurance Company market on an average of 1200 to 1500 cattle a year. H. K. Wooten of Chickasha, Oklahoma, markets from 9000 to 22000 cattle a year. Of course all the Oklahoma cattle do not come here, but a large part of them do. I get practically all the cattle from these people other than the Oklahoma concern, with a few exceptions, a load or two occasionally goes around. The Aetna Insurance Company cattle [fol. 1287] that are located in Ohio, go to an eastern market, but the Indiana and Illinois cattle come to Chicago which comprises the bulk of their entire feeding. They absolutely come to our firm when they come to Chicago. I have had the Aetna Insurance Company business for three years; Funderburg for fifteen, Wooten for ten years. These customers which I have mentioned do not send their livestock in at about the same time of the year. They market at different seasons of the year. These customers market their livestock through my advice and consulting with them, there is none of them that ship large bunches at any particular time. As to their maximum, depending on the market, anywhere from two to four or six cars a day.

On the canner cattle, that is, the canner cattle first men-

tioned, they were shipped in in bulk; all of them have to be sorted and sized. They go right out and cut them off and ship in four to six cars or two cars. The Funderburg cattle all have to be sorted and practically all the Oklahomas.

When a buyer comes into my alley, as in all other alleys, we ask him what he wants and he tells us and we aim to show him the particular load or bunch of cattle that he is interested in, and it is not necessary to show him something that we know he won't buy because of disturbing the cattle and shrinking them. If we are showing a buyer a particular class of cattle, it is courtesy to him to show him all of them of the class he is interested in before we show [fol. 1288] them to anybody else. If another buyer who is interested in that class should come along, we would require him to wait until the other buyer left; in common courtesy to the buyer in the pen, this buyer would not attempt to come into your alley. He would not want you to know he was interested in those particular cattle and he would make a bluff and ride on. Under those conditions, two salesmen would not be working on the same grade or class at the same time.

Q. Mr. Boyd quoted to you, quite at length, certain figures from the work papers covering the receipts in your firm and asked you whether the variations in those figures required you to employ another salesman. Now, just what were the conditions as represented by those figures which make necessary the employment of another salesman?

A. Well, I have been in the business a great many years, and I aim to keep pace with the times. Competition is strong and I have to deliver as good as anyone else, and, under the present manner of buying cattle, a man is only physically able to do so much, and I am pretty strong at that, but I could not do it all myself and do justice to my patrons.

Q. What is the value of your soliciting?

A. The value of the soliciting?

Q. Yes.

A. Well, customers have a bunch of cattle on hand like some of these various large operators and they call you upon the phone or write you to come out and look at their holdings and you go out and look them over. Then, the question with them is that you use your best judgment in

getting them on the best market, the kind of cattle to ship on particular days, and, after we have looked at those cattle, we have them in mind pretty well, but if the market justifies two or four loads of any particular kind, we aim to have [fol. 1289] them, have them here, at all times keeping in mind that receipts will cause us to cut down or advise shipping a few more at different times.

Q. Are you ever able to take care of that situation by telephone or by letter?

A. You cannot unless you see the cattle; you have to know the class of cattle they have and know all about them.

Q. How did you manage that during 1932 when your soliciting trips were cut down.

A. Well, I ran out a little on Sunday, ran out here and put in extra hours and did the best I could.

Q. Do any other firms on the Chicago market receive any of the Oklahoma cattle which you mentioned?

A. Yes, there are various firms receive Oklahoma cattle.

Q. From the same people that you receive those?

A. Yes, and I will tell you right here that I consider the man shipping to me. That Oklahoma cattle this year was too big for one firm to handle and, therefore, I advised him and was the cause of him splitting some of those cattle with my competitors, because I was looking after his interest and I know I could not handle all these cattle in one place to his advantage. That is a matter of record.

Q. And you divided the business up with some other firm here?

A. No, sir, I got him to ship to some other firms, but they got the full benefit, I got no benefit whatever.

Q. And, under those circumstances, do you designate the firm?

A. I did, but I am not noising it around because they are all good friends of mine, but I had him ship to what I thought were pretty good fellows.

Q. I believe you said you sell the bulk of the cattle of your firm?

A. Yes, sir.

[fol. 1290] Q. Do you know what proportion of the cattle you receive you would sell?

A. The proportion of the cattle he shipped from Oklahoma to Chicago.

Q. No, the cattle received by your firm that you personally sell, all the cattle.

A. I cannot tell you just what proportion I sell but it is practically the bulk of them.

I had the same people during 1932, with the exception of Mr. Sullivan, who came with me January 1, 1933. And have dismissed no employees. Have made no reductions in salaries in 1933. I have not made any material reductions in any items of expense. I figure night and day on it and I cannot see where I can cut any expense any place.

Mr. Henry Schroeder, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 7841 Clyde Avenue, Chicago. I own the Schroeder Live Stock Commission Company. I have been in business for myself, this is the tenth year. Before I started in business for myself, I was with the Central Live Stock Commission Company, but I have been with a few different firms. I have been selling cattle for twenty-five years. I used to be in the butcher business and also bought livestock and shipped them to market and fed cattle in the State of Iowa.

[fol. 1291] A. C. Schroeder is my son. He does not sell anything, he helps yard, does the office work, weighs, whatever there is to do. C. E. Hanley sells the butcher stuff; and R. B. Ryan sells hogs; E. Shaughnessy is the second man in the hog house. C. Waldron is the stenographer, helps on the books, and whatever there is to do in the line of office work.

I sell the steers. Hanley and I do the buying when we buy on order. When I started to sell cattle, I started on butcher stuff the first year or two I was here. Since that time I have sold steers.

We had no salary reductions in 1932 that I remember. Our business comes from different states, Iowa, Illinois, Wisconsin, some from Indiana but not a great deal. Most of the cattle business comes from Iowa. Our truck business is not as big as rail business. I don't think the truck

business has increased in comparison to the rail business. Ryan, my son and myself did the soliciting for the firm. My business was profitable in 1932. I do not know if I am making a profit this year for the first six months.

We clear the Nalley Commission Company. Mr. Nalley helps me selling steers, we do all his office work, sell his butcher stuff, but he also helps us yard and weigh and helps me sell steers, he and I work together. We sell his hogs. He pays us 35 per cent of his gross commissions. He puts [fol. 1292] in full time in the alleys; no one else works for him. The business is consigned Nalley Livestock Commission Company. Our business is consigned Schroeder Livestock Commission Company. If the records show that we handled 157 cars of cattle per salesman, including Mr. Nalley as a salesman, it must be.

Q. I am telling you that you had 17 cars of cattle during the month of March, 1932, there were 451 head in those cars necessitating 76 drafts. During the following month you had 10½ cars in single ownership, with 276 head, necessitating 49 drafts, that would be about a little over five—five and one-half head to the draft; and in May you had 17 cars with 442 cattle from 15 owners in 62 drafts, that would be about seven head to the draft; and in June you had five cars, 125 head with 14 drafts, about nine head to the draft. That was single ownership business in carloads. In January of 1932 you had 44 truck cattle with 25 drafts; and in February you had 26 truck cattle that you sold in 19 drafts; during the month of August you had six single decks and seven double decks; during that month in mixed cars that had cattle, calves, hogs and sheep in them, there were 44 head of cattle with 37 owners and 35 drafts; you had 202 head of calves with 81 owners and 21 drafts; you had 830 head of hogs with 87 account sales and 82 drafts; during that same month in those cars there were also contained 103 head with 14 owners and 19 drafts. The total commission for that month on that class of business was $734.65. Do you know how you would sell 202 calves in mixed carlots that belonged to 81 owners in only 21 drafts?

A. Well, they were weighed together and prorated, you see. That is what some concerns want us to do.

Q. During September, you had 7 single decks and 3 double decks that contained mixed cattle and calves, hogs

and sheep; you had 82 head of cattle belonging to 35 owners with 67 drafts; you had 57 calves belonging to 26 owners, 36 account sales and 18 drafts; you had 582 hogs, 38 [fol. 1293] owners, 37 account sales and 52 drafts; you had 21 head of sheep belonging to four owners, six account sales and five drafts. Did you handle last year a considerable number of co-operative shipments from co-operative shipping associations?

A. Yes, sir.

In handling some of that business, we are able to weigh animals together and pro-rate them where we have home weights. We sure have a very considerable number of drafts for the number of animals handled. That business has not been increasing over the past several years. Not the last year or so. Our business would be lighter this year. As to the number of drafts we had to make to sell the same number of cattle, it would be handled the same way. There would not be much difference, would not be any difference. We sort the cattle in order to sell them. We do not make any more sorts than necessary. Our average was 157 carloads of cattle per salesman, including butcher stuff. I found that on most market days we were busy selling this mixed stuff, as it was read to me, requiring a large number of sales to dispose of the number of animals handled.

I get down here on a Monday morning at six o'clock. Other mornings about seven, that is myself; the boys, of course get out earlier. It is hard to tell how late our force works; we work until we get through; sometimes it is late and sometimes we get through in good season. I would [fol. 1294] call in "good season" on a short day, excepting Saturday, when we get through around four or five o'clock. When we have a late day we have to work as late as eleven o'clock on a lot of those drafts you are talking about to prorate. The greater the mixtures, the greater the number of drafts, the longer it takes to handle the work in the yards as well as the work in the office.

We get our hog business from Iowa, Minnesota, Wisconsin and Indiana.

Direct buying of hogs by packers has had an influence on the amount of business which we have done in the last five years. It has cut us down considerably in Iowa and Illinois. I am personally acquainted with most of the ship-

pers, who have been regular patrons of the Schroeder Commission Company or the predecessors of that company who have since shipped hogs direct to packing plants. They give as a reason for shipping direct, that they claim they can do better shipping direct. I have attempted to convince them by solicitation that it is not true where I believe such to be the case, and have been able some to convince those shippers that it would be profitable to them to ship to us. Some of them have made money by shipping to Chicago and some of them would have made money shipping direct.

[fol. 1295] Cross-examination:

We get thirty-five per cent on sheep consignments to Nalley. The fellow who sells our sheep sells his. I think he gets half, that is what most of them that handle these sheep get. He gets half of the regular commission, and I get 35 per cent of Nalley's commission. Mr. Nalley helps me sell cattle. He works with me on the steers. I help him in selling cattle consigned to his firm. I don't know how much of his time is devoted to selling cattle for me. I could not say what part of my time is devoted to selling cattle for Nalley. Yes, Nalley does work full time selling cattle for our firm. We work together.

I am actually the manager of our firm. I do anything that comes along that has to be done. Sometimes I have to leave the cattle alley and run down to the hog alley; it depends on what comes up. I could not tell you what per cent of our total receipts of cattle would be steers. I don't know whether they would be one-half steers. I never looked into that. I don't know. I could not tell who sells the greatest part of the cattle, including the Nalley shipments. I don't know whether I sell more than any of the other two salesmen. I have one hog salesman. He has a yardman to assist him.

As to what extent direct buying by the packers has cut down our receipts, I don't know. I know it is plenty.

[fol. 1296] Q. In your opinion, do you render as efficient service to the shipper who ships to you as other commission men on these yards render to their shippers?

A. I don't get that.

(Whereupon the question was read.)

A. Do I render?

Q. As good service.

A. I sure do.

Q. You feel that your salesmen and that you are as effcient as the other salesmen on the yards:

A. I sure do.

Q. Do you believe that your firm could have sold more cattle and more hogs last year if you had received them than you actually did sell?

A. Well, there are days we could handle more, yes.

Q. How many days?

A. That, I could not tell you.

Q. How many more do you believe you could have handled?

A. That is hard for me to say.

Q. Do you know the greatest number of carloads of hogs that your firm received in a single day for the year 1933?

A. No, I do not.

Q. Do you know the greatest number of carlots that your firm received or that your firm, plus Mr. Nalley's firm, received in a single week during the year 1933?

A. No, I don't remember.

[fol. 1297] Mr. E. L. Vaughan, a witness called by the Respondents, was recalled to the stand and testified as follows:

It is one of the conditions of the loans to the farmers that the livestock be sent to you when sold. We have to discount quite a lot of loans, could not carry them all. The rate we charge is seven per cent, and where we have to rediscount them, the bank takes that at six to six and one-half. We practically make no money on rediscounts out of the interest. The mortgage on the livestock and feed is the only security that we have. The livestock is not insured in any way.

I recall on direct examination that some figures were read to me showing the variation in the receipts from month to month and it was disclosed that the month of

May was our heavy month. That is the month during which we received most, or at least a large part of the cattle from these large operators. I stated that in my opinion the month of May would not be a fair criterion of what our sales force could do. I don't quite understand the question, other than these large shipments coming, it does not require quite as much work, but it necessitates the full force, full blast, all the time; and other months, while we might not have as much business, it might be more difficult to handle and require considerably more effort. As to [fol. 1298] what would be a fair criterion of what our sales force is capable of doing as far as the volume of business handled is concerned, it depends altogether on the class of business and the conditions of the market from day to day. The condition of the market affects it very materially. The packers employ specialists to buy cattle and they come out nearly every day, trying to buy them lower. The salesmen resist this and we cannot sell cattle one time in twenty to the first man who bids on it, because he will bid you lower and that is where salesmanship comes in, to resist that by holding up the market and positively refusing to sell them until they wear us or we wear them out, and we win out as many times as they do and that, in a measure, maintains a market, and that is why we have to work so hard on cattle on different days and on different classes. The amount of resistance which our sales force puts up does not depend on the number of head or the volume which they have to handle. They might try to buy a single animal for fifty cents less per hundred than it is worth, and they also might pursue the same tactics on loads or two loads. When the packers pursue their bearish tactics that they usually do, and on days when receipts are rather heavy, they positively refuse to buy cattle early in the morning, regardless of how many times you show them to them unless you will make concessions, and, therefore, we refuse to do that and hold these cattle up and try to force the market on a steady basis, or try to [fol. 1299] get higher if we can. We usually try to make a clearance but there are days when we know they are bidding at less than the cattle are worth and we positively refuse to sell them. During the past year, it was quite a frequent occurrence. You might have to go over with a load or you might have to go over with ten loads. As to

whether we carry many of them over longer than one day; I can recite a case we had last Friday; three loads of cattle; we showed them Friday; we showed them Monday and we showed them Tuesday and we shipped them to Lancaster, Pennsylvania and Baltimore. They were low-priced cattle, two loads of them were low-priced cattle and one load was a medium load of cattle. There was a demand here, if you would take their price, but they were not bidding what these cattle were worth. We occasionally forward cattle like that. It doesn't happen to us only three or four times a year.

I have had considerable experience on the other markets in the early days and during the course of a year's business, I handled hundreds of cars of cattle that were bought on river markets and shipped to Chicago or which have been forwarded from river markets to Chicago. There are quite a good many cattle forwarded out of the river markets to Chicago. We very seldom carry over any cattle from one week to another.

[fol. 1300] As to what I meant in answer to a question by Mr. Boyd, that I hire our salesmen on the basis of what they can deliver; I have never hired a salesman because he controls business, but because he could take care of and handle my business in a manner which pleased me and my customers. I pay him a salary for his ability.

As to how I do arrive at the salary which I pay a salesman; well, competition is strong, like the packers, they hire the very best buyers after years of experience, and, in the commission business, I am compelled to hire just as good a man as I can find at as low as I can, and, of course, I cannot hire him any cheaper than anyone else. I absolutey would not hire a cheap man or a man who is not known as a high class man and a judge of cattle and a trader at any price. When I say "known as a good salesman" I mean on the market, to cope with the packers.

Q. But would you hire a man to sell cattle for you irrespective of his capacity to handle cattle?

A. You mean by that, you ask me if I would hire a man to sell cattle if he was not a cattle man?

Q. No, he may be a good judge of cattle but assume that he has a very low capacity in selling.

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A. I would hire no man unless he was known to have ability and a first class man.

Q. Well, do you regard his capacity to handle livestock and sell livestock a part of his ability as a salesman?

A. Absolutely; he must be a judge of the market, of [fol. 1301] values, and equally as good traders as the packers send against him through their buyers.

Q. And, by "capacity" I mean the volume which he can handle.

A. Not the volume; he could lose a customer on one car of cattle and he could lose a dozen customers on a dozen different loads.

Q. You think, then, that the volume that he handles or sells for you would not, in any way, affect his ability as far as getting the proper price is concerned?

A. Well, by "ability" I mean that he should be able to cope with small receipts and heavy receipts.

Q. But would not his capacity to handle volume be a factor as far as his profitableness to you is concerned, all other things being equal?

A. No, sir.

Q. Would you regard a salesman who could handle only a car a week as a profitable man to you?

A. I would hire no man that could only handle one car a week. I hire a man on an average of what my business has been for years and is at the present time, and I aim to hire him to cope with that volume of business.

Q. You mean you pay him a salary based on about what business you will have for him to handle?

A. No, sir, I pay him a salary practically based on the volume of business I handle and his work would be his proportion or what he could do while he is selling and sorting.

Q. And, if your firm received a greater volume, would you expect him to handle his proportion of it.

A. Yes, sir.

[fol. 1302] Q. Have you ever discharged a salesman, because of unsatisfactory service, either by that or inability to satisfy the customers or by reason of the fact that he could not handle his proportion of the volume?

A. Many of them.

Q. For which reason, either or both?

A. For the simple reason that he could not cope with existing conditions, could not make sales in line with what

my competitors are doing and, therefore, to continue with him I would lose my business.

Q. Did you ever discharge one because he could not handle his proportion of the volume which you expected him to handle?

A. I didn't discharge him because he could not handle his proportion, but I concluded he could not handle any part of it satisfactorily.

When it becomes necessary for me to hire a salesman, I canvass the yards very thoroughly and pick out a man that is known to the trade as being a good man and has been successful. I usually hire him from some other commission firm on the market; that is the only way we can get them. I stated that a scale ticket might represent the effort of three or four salesmen. In explaination of that; I might show these cattle to one buyer and the other salesmen show them to different buyers, or the buyer that bid me on them first might come back and bid these other salesmen on them. It is a known fact that the same buyer might visit you four or five times on the same load of cattle and [fol. 1303] raise his bid from time to time, finding that he could not buy them at what he bid you on them first or second or the third time. That means that any one of the cattle salesmen of our firm might show the same pen of cattle to different buyers. As to whether any of them would close the deal or would the final decision as to the sale be put up to me, in some cases, it might be put up to me, and, in trading, we advise with one another and we are all three conversant as to what different people have bid us on a particular bunch of cattle, and he might not consult me towards the last at the time he made the sale because he knew he was getting more money than I had been bid and that was the price that we were willing to sell them at. Under those conditions one salesman can show the cattle as well as another salesman.

There is a rule of courtesy among commission firms at this market governing the employment of salesmen, and, I, myself, would not attempt to hire some firm's employee or salesman, but, at times, different firms' business drifts away from the large volume, and you might conclude that this man was available, and, under those circumstances, you are at liberty to approach him, or he might approach you. It is very seldom that we approach any man's sales-

man to hire him, but we rather let them come to us. He might have some dissatisfaction with his present firm and have a reason for a change.

[fol. 1304] To a certain extent all of our salesmen including Mr. Goble make trips to the country, to solicit business, I have a way of checking up on solicitation effort to determine whether or not it is profitable; I could check it up; if you send a man out to see any particular man, and he has been your customer before, and you get his business, you have to credit that to the efforts of the man you send out. I have done that to determine the results of solicitation. My own personal experience has been that it takes too much money and it is not very profitable to me.

That effort is not expended to the end that we will get new customers. We get some new customers, but the bulk of our soliciting, if you call it solicitation, which is in the way that I describe it, my way is that, my own experience is that the most of our road work, traveling, is to look over cattle in the feedlots from people who are already customers and demand that we come and look at their cattle and advise with them and keep them posted afterwards on their particular class of cattle.

I think I testified that some one or all of these big operators who are customers of ours feel that the commis-

[fol. 1305] sion charges are reasonable. In fact, I have a letter in my office now from a man for whom I sold 2,800 and some cattle this year, and have sold his cattle for fifteen years, who assured me that he did not ship to me through friendship, but because he felt and knew that my company rendered service that is entirely satisfactory, and he is going to continue on that basis only. He did not state specifically in that letter that he thought the commission charges were reasonable. I have discussed this question with various of them when they are here. It is not very often, but it comes up in a way, and my recollection is that they wanted the service, they don't want cheap service, they are willing to pay and pay more if they got it. I do not recall at this time any one of these customers who has stated to me that he thought the charges were reasonable, not in that light. They always express themselves as "everything was satisfactory." That is, they were satisfied with our services.

Mr. Bell sells butcher stock. His efforts are confined in a different alley from mine. For the reason that he sells

cows, calves and bulls, he has personal charge of that department and he runs it exclusively with the exception of coming and advising with me, and sometimes I will take some stock from his alley up to mine and sometimes I send some back to his, but he has assistance, of course.
[fol. 1306] My firm has made no reductions in salaries in the year of 1933.

I have been unable to make any reduction in any items of expense during 1933 whatever in any salaries or other expenses.

Redirect examination:

Q. So that we are not to understand from your testimony that regardless of increased volume, that you would continue to handle increased volume or increased effort with the same force?

A. I can answer this, that on an average volume of business which we have done in the last four or five years, conditions have changed by reason of trucks, cooperatives and other sources to the extent that I was compelled to put on another man, even though my business had not increased any.

Q. Now, in the specific instance that you stated of requesting one of your large shippers to consign a part of their business to another——

A. Yes, sir.

Q. —indicated what with reference to your ability to get the market price on increased volume?

A. My ability in that case could not be considered because under buying tactics, no man to my way of thinking can handle train loads of cattle or large numbers of cattle, because buyers are not taking them that way, and my reason for requesting this man to split his cattle with other firms was from the fact that I knew that I might be discriminated against by having this number of cattle in my yards and I wanted him to put some of them in another division and by doing that, while I was losing the commission, I left that I was making this man money.

[fol. 1307] I would be very glad to duck the loan part of the business but the banking situation has been such that a good man could not get money and I have favored them more to help them than myself. This past year I have made no loans that I can recall to any man who has not been a

customer to our company for a good many years and his ability as a feeder and his well known honesty was taken into consideration, and I have turned down business from people who would like to ship to us providing we would make the loan. I have refused to loan them money. The rediscount rate is not sufficient or does not afford a sufficient margin for a person to make livestock loans if they do not take into consideration those circumstances that surround my loans.

I attribute a large part of the success of our company to the activities of its stockholders and in the management that I as an owner render to the business. It positively is one of the vital factors in our business. Unless you have the best men that can be employed, you can lose your business, if they cannot cope with existing conditions of competition and against the buyers that the packers send against us. I can conceive of no manner in which present rates are not even more fair now than in 1923, when cattle were selling high, for the simple reason that the work we employ now is, to my particular way of thinking and with [fol. 1308] my firm, requires more work than it did during that time and my answer is the same with reference to 1932.

My observation, and I know what I am talking about, we do more work now than we have ever done before. It is harder to make sales. The packers' methods of buying the cattle have changed. They have various buyers who buy specialties, and we have got to cope with them in every department and on every single load of cattle we have to sell. We have got to fight with them in order to try and maintain a market which will keep the country from going broke, that is the size of it.

We are rendering to the country and the cattle feeding and hog feeding people right now, a service which is invaluable to them to the extent that we are trying to fight their battles, we are trying to find competition and we are fighting these markets each and every day trying to hold up and maintain prices, not only to the man who has livestock on the day of sale but which will reflect in the thousands and millions of cattle back in the country, and keep the market up for them.

[fol. 1309] In selling livestock on this market I not only make the price on the individual loads I sell, but I contribute in a large measure to making the values for all livestock in the United States.

To make a rate so low that we could not operate under it without cutting our employees down to wages that they can hardly live on, and cheapen up the service in every department, I feel that we are destroying the open market and we cannot cope with the conditions that exist on the buying side.

I could not render our service any cheaper and keep up that service. I could not render that type of service which we now render at a reduced rate. In my judgment the effect of a small reduction upon the business as it is transacted by me on behalf of our patrons, is that the patrons as a whole would derive very little benefit and as to my firm, I would lose money and have to cheapen my service.

Q. Do you subscribe to the statement of the arbitrators in fixing the rates under which you now operate that it would be—they said in effect that it would not be desirable to have necessary talent leave the field of the livestock commission business and engage in any other occupation or undertaking, but that they felt that the rate should be sufficient to keep able talent in this business; do you subscribe to that view?

A. I will have to ask you to read that question again, please.

(Whereupon the question was read.)

[fol. 1310] A. I don't just exactly understand that question, Mr. Boyd.

Q. Well, the thought—I think the arbitrators meant to say and did say that they felt that the rate ought to be high enough to keep talented people in the business and that the rate should not be reduced to a point where that high talent that is in the business would leave it and go somewhere else, if it was possible for them to do so; do you feel that the best interests of the patrons of this market and all livestock producers in this Nation is to maintain these rates at a point where you would be able to remain in the business and the other class, high-talented, exceptionally skilled men can remain in it and make a livelihood of the kind that they are entitled to in this society?

A. I do, yes, sir.

Q. You have indicated that you believe that the solicitation of business from your viewpoint and as it may affect your type of business is expensive and inadvisable, or

that the expenses should not be made except, I take it, under peculiar circumstances, that on the whole that type of road work of simply soliciting has not been in your judgment profitable to you as a commission firm?

A. It has not been to me, no.

Q. Do you believe that that may be necessary and justifiable in the case of some of your competitors?

A. I think it is necessary, yes, sir.

Q. The class of business that you have, which you have handled over a period of years makes it less necessary than in the case of some of your competitors?

A. Yes, sir.

Q. And the lack of necessity for solicitation in your case, you think is peculiar to your business?

A. I do.

[fol. 1311] Q. Would you like to attempt to go out into the market and employ a salesman-manager for McCausland Hoag and Vaughan at a price that would be the average of employed salesman-managers on this market or employed managers serving in any other capacity?

A. Read the question, please.

(Whereupon the question was read.)

A. If I was compelled——

Q. That is, to take your place, you understand?

A. Yes, I do not want to appear egotistical but I would not attempt to hire a man to take my place, and if I would be incapacitated where I would have to hire a manager, I would consider his services about equal to what I would have to pay for a cattle salesman because his duties mean a lot to the firm. He could make you or break you in short order.

Q. Would you not think or would you not give serious consideration under existing conditions and the precariousness of them to close your business rather than take such a hazard?

A. I would close it.

Recross-examination:

My commission business, and I do not think it is unlike any others, it is personal service. If I were to die, my business would close up tomorrow, and if I was to attempt to hire some one to take my place, it could not be done for the simple reason that the bulk of my business and the

business of other houses—this is my opinion—is based upon the personal service rendered by the individual. Speaking [fol. 1312] for myself personally, I would not hire a manager. If I would become incapacitated I would close my business. The hiring of Mr. Sullivan releases some time for me and Mr. Bell so that we can do other things, nothing outside of the business, but it enables me, if a man sends me a personal invitation, to go to the country, my business will be conducted in my absence the same as it is being conducted over there while I am attending this meeting.

In the case of where I had one of my customers divide his consignments and send part of it to another firm on this yard, I got the bulk of the business. If he was shipping ten loads of cattle, he would possibly give me six and another firm two and another firm two. What I mean about being more concerned and have been about the livestock commission business, with my particular business in the past two years than I have ever been before; well, there are a great many propositions come up in this business. Everyone wants to borrow money, and may want a loan, may want to make drafts, he may be shipping cattle and they may be mortgaged to someone else, and you have to be ever on the alert to protect yourself and to protect the banks in the country or anyone else. In fact, the country is very short of money and peculiar things come [fol. 1313] up in the business every day or every week. We are bonded; we, of course, do not want to lose any money or go broke. We want to protect everyone as well as myself.

I do not believe that commission rates should bear some relation to the value of the livestock. I do not, because in 1922, and prior to that time, it was easy to sell cattle as compared to now. You do two or three or four times as much work now on the same class of cattle. This is an eternal struggle over there now to get a man something for his cattle.

As to just how I would determine the fairness of our commission rates at the present time; in fairness, I believe that a man is entitled to fair compensation for what he does. It may appear to some that wages are high to some of these salesmen. We are compelled to hire them for the protection of the country and our business, for the simple reason that a first class salesman is what I call a specialist. There is not one man in fifty that ever comes to the Union

Stock Yards—I may be a little wrong on the figures, with the intention of making a steer salesman or cattle salesman that ever accomplishes that feat, because a man that is a real steer salesman or cattle salesman, he is a specialist, the same as a doctor or a lawyer who makes a success of it.

[fol. 1314] Q. Would you favor a rate which would maintain everyone in business, regardless of the volume handled?

A. That I cannot say. It is stated that there are too many in the commission business; it is also stated that there are too many farmers; they raise too much grain; and who is to tell me that I am one of the ones that should quit, or tell any particular farmer to quit?

Q. Do you think, Mr. Vaughan, that the commission rates should be high enough to maintain a firm in business if it handled only fifty cars in a year?

A. I would not attempt to make any remark on the fifty-car man.

Q. We would be glad to have your opinion for the record.

A. Well, it might be construed as being prejudice, so, if you will excuse me——

Q. You prefer not to answer that?

A. I prefer not to answer.

Q. Is that because you do recognize that volume is a factor?

A. I am not a large firm, but I figure maybe that somebody would say that I was not big enough to go along, and it is not the biggest firm,—I will make this statement,—that renders the best services at all times.

I mean by that a firm might render a satisfactory service, irrespective of volume. I do not recognize volume as being the successful factor, as far as my individual firm is concerned. I could not conduct a successful commission busi-[fol. 1315] ness on fifty cars. My ambitions are higher. As to what volume of business I would want, if I were starting a commission firm; my ambition, at all times, has been to handle successfully a medium sized firm. By "medium-sized" I mean two or three thousand cars a year, because I felt, with that number of cars, I could have personal supervision over it and be able to hire first class men to go along with me. I have given the experience of my people with the exception of Mr. Bell. Nothing has been asked re-

garding him. He came up through the ranks of my firm for thirty years, and, during the past ten years, has been a butcher cattle salesman.

I said that it has been my ambition to handle a medium-sized business which ran from two or three or four thousand cars. My present organization can handle that volume of business but no more without extra help.

We sell some cattle for traders. All three of us do. They are harder to sell than fresh ones. That is because they are usually bought one day and carried over and they become stale. The packers suspect they are stale and they back away from them, on the same theory that I would go on if I was going to a store, if I could buy a new suit, I would not buy a second-handed one.

[fol. 1316] In making loans, I draw the mortgages and figure the notes, and handle part of the correspondence but as far as the bookkeeping, the sales bills and the general office routine, I have nothing to do with it. I do not make out account sales. I am glad I don't. I used to be able to figure them but these cooperatives and one thing and another, are too fast for me now.

Redirect examination:

I have sold cattle in Chicago since 1905, have been in business for myself possibly twenty-five years, I worked hard. I get at the yards at six o'clock in the morning, every morning and part of Sundays, and I spend my entire time and give my attention to this business, and it has been a struggle on the present rates, and I know that I have been economical and did plenty of work that I should have some one else to do, try to make a living, and it is a business, while I spend my entire life in it, if I was to die tonight, it would be wiped out, my estate and my children or my wife would not get one cent benefit.

Under present conditions I think the trader is just as essential as the packer on most classes of cattle.

We don't class stockers and feeders as seconds at all. The traders are essential to this market. They buy thin [fol. 1317] cattle and sort them and sell them to the man to go back to the country to be fed.

Recross-examination:

Q. Mr. Vaughan, in your opinion, do you think that the length of time that a man has been engaged in business on

the market should be a factor in determining of rates that he should charge for his services?

A. Absolutely not, but a man cannot build up a business or become an established, well-known salesman unless he is in the business for years. If that was not a fact, there would be thousand commission men where there is not possibly a hundred now.

Q. Does it happen frequently that you receive seconds to sell and are not able to sell them and turn them back at the end of the day?

A. Had that yesterday.

Q. Is that an unusual occurrence?

A. Well, it is not unusual, no.

Q. Does that happen more frequently? Do you carry over livestock for country shippers or not?

A. Yes.

Q. Are they brought back to you the next day usually?

A. No, sir.

Q. You don't get a chance to sell them?

A. I would not take them, because everybody in my division would know them and they would not bid me on them. The speculator would try to fool somebody else in some other division.

Q. Do you recall the largest number of carloads of cattle you have ever sold in a day?

A. Yes, sir.

[fol. 1318] Q. How many?

A. Seventy-nine loads.

Q. How long ago was that?

A. That was during the War. Not during the War, but during the strike, at the time I was getting business from around Burlington, Illinois, and the Illinois Central was about the only railroad that was bringing them in here. I had 79 loads of cattle one day and had them sold before ten o'clock.

Q. Do you mean that you were practically the only firm that had cattle?

A. I practically had the market cornered for a few days and I got something for them too.

Q. That was a rather unusual circumstance?

A. Most unusual and very pleasant.

Q. Do you recall the largest number that you sold in the year 1932, you personally?

A. Well, I could not state at any time what I sell personally as long as I have got other men with me, because it is split up.

Q. Do you recall the largest number of cattle your firm handled in any one day in 1933?

A. No, the records will show that only, I haven't it.

Recross-examination:

I will be frank to say that the truck business has always been a thorn in my side, I do not solicit truck business at all.

[fol. 1319] Mr. Eugene Albert Woods, a witness called by the Respondents, testified as follows:

I am a cattle salesman. Yesterday we had seventeen loads of cattle. They were sold by three of us.

Mr. A. Gilmore, a witness called by the Respondents, testified as follows:

Direct examination:

I live mainly in the stockyards, but I sleep at 6810 Loomis Street. My firm is Swanson, Gilmore and Castenholz. I have one partner, Mr. Castenholz. I generally have charge of the office end of the business and I sell hogs for the firm.

I have been a hog salesman nearly forty years, between thirty-nine and forty years. I have been interested in the business since 1907, started in, and it will be forty-one years the 6th of September. I assume the general management of the concern but advise with Mr. Castenholz regarding transactions that arise from time to time. My first work from day to day is looking over the mail and seeing if there is anything that needs attention, any financial matters, the next business is to get to the hog alley as soon as I can. I verify and check over all the work that is done in the office, also and very particularly all country remittances [fol. 1320] to see whether they are correctly completed, also all correspondence and all money matters of all kinds pertaining to the business. I employ a bookkeeper and we have

a cashier. I have a stenographer, and myself. I do write letters myself, unfortunately. The men who serve in the yards give very little assistance in the handling of the office work.

I have two men selling hogs with me and one of them also helps with the yarding and one man, besides, steady yarding, and sometimes some of the other men help yard some of the hogs and sometimes I do. My son sells hogs. We also have Mr. Mahoney selling hogs. He has been with us pretty close to twenty years, I think. My son has been in the yards about eleven years. I have had occasion to notice the types of arrivals of hogs with reference to the number of owners that come either in cars or in trucks, the number of drafts it is necessary to sell hogs in, in order to perfect sales. I don't know that I am familiar with any of the statistics which are available that have been taken from our records by the government in the case for the year 1932. I could have my own ideas and estimates, sometimes it seems like it is ten or fifteen times as many today. You never get through. From my observation and experience in the hog house, I believe that the selling of hogs requires more time and attention, sales effort, than it did [fol. 1321] five years ago; enormously. The condition has been changed very much by the class of stock that arrives and the condition it arrives in, a great many more owners, conditions of the market, the fact that you can sell only a limited number specially sorted stuff to a lot of different buyers and you may have to show bunches of hogs to a dozen people when formerly you would not have to show them but to one; you may have to take the one bunch and cut it into a dozen pieces to sell them, and make a dozen different pieces of one bunch of hogs, and then sometimes you have got some of them left.

Q. In the month of August, you had 20 single decks, 23 double decks, with 3,722 head, with 224 drafts and they are all single ownerships. In the same month of January, same year, you had, in plural ownerships, 39 single decks, 7 double decks, 3,620 head with 335 drafts. During November you had 7 single decks, plural ownerships, with 438 head, from 39 owners, with 64 drafts. You will notice a decided variation in the number of drafts between months.

A. Yes, sir.

Q. As well as a very considerable, you had one-sixth of

the amount of business for that time in October than you had during the month of January and eighth of the amount of business in November that you had in February. In Mixed No. 2's, which includes all mixtures, cattle, calves, hogs and sheep, except cattle and calves alone are not considered, in straight cars, single ownership, during the month of June, you had 459 head of hogs, four owners with 48 [fol. 1322] drafts. During the month of March, you had 1,343 head from 9 owners, consisting of 93 drafts. During the month of October, plural ownerships, you had 415 head requiring 84 drafts and in April you had 400 head, plural ownerships, from 49 owners, with 99 drafts. In the truck-in business, hogs, the range of your receipts by months was from 1,550 head in March to 3,001 head in August. During the month of January, you had 2,690 head of truck-in hogs from 116 owners with 263 drafts. During the month of August you had 3,001 head with 189 owners with 356 drafts. And during the month of March, you had 1,556 head from 115 owners with 238 drafts. So that in the case of truck-in business, you will notice a decided difference in the average number of drafts for the number of head sold during those months. No doubt, and it is getting more so all the time.

Q. * * * I will ask you to discuss, if you will, the policy of Swanson, Gilmore and Castenholz, with reference to the limitation of expenditures for all purposes, if you exercised any such limitation during the years of 1931 and 1932. I will ask you, first, if you know the general results as shown by the Government Profit and Loss statements for the two years.

A. I do not know what their statements may have been, but I know——

Q. So that you may be familiar that, I——

A. I do not know what their statements may be, but the results of the business have been less each year with the amount of work added on to each year and almost every day. If I can say so, I put in a long time, instead of being able to ease up, I am gradually working harder all the time with far less results.

Q. You mean that it is less profitable to you?

[fol. 1323] A. Yes, sir, that, of course, is mainly due to the class of business that comes and the way it has to be handled. Keeping busy keeps you out of mischief, I guess, so it is all right.

Q. Well, your company sold, per salesman 433 cars of hogs. That is arrived at by taking the mixed cars and seconds and truck-ins and applying an equivalent.

A. Yes, sir.

Q. And all classes of business included, you had an average of 433 cars sold per salesman, which would make a total of 1,299 cars for all of you.

A. Yes, sir.

Q. What have you to say about the necessity of using three salesmen for the sale of 1300 cars of hogs a year of 1932?

A. Three salesmen are far more necessary with that number of hogs at the present time than one was with five times that many hogs fifteen years ago.

Q. And why, will you explain why you think that is true?

A. I think I have mentioned it, but I will go through it again. We used to have perhaps an alley full of hogs and we could take one man, one packer buyer perhaps and sell him nearly all of those hogs. At the present time, you might take that same packer buyer and he might buy ten hogs out of this bunch and twelve hogs out of another bunch and maybe two of another bunch, and you have to start in again on that same leavings and sell what you can out of them.

Q. What do you think, Mr. Gilmore, if the statement were made in this case that Swanson, Gilmore and Castenholz because you did not average better than 500 cars or carload equivalents per salesmen a year, were inefficient?

A. I do not believe I understood you.

(Whereupon the question was read.)

[fol. 1324] A. Well, we are working faithfully, and we will have to leave the customers judge whether we are efficient or not.

Q. Well, do you think that it could be reasonably expected that you and your other salesmen, in order to be worth the rate that you charge, would have to sell or should have sold or could have sold a larger number of hogs during the year under the circumstances and in the parcels in which you had to divide them?

A. It is possible that we could have sold more if we had more room to handle it in; some days we could have and some days it would have been an impossibility.

Q. Did you sell out today?

A. No, sir.

Q. What do you call the hog market today?

A. A few hogs early were steady and a later market five to ten lower and closed very dull at a decline, with a good deal of the underweight common stuff at more than decline and hard to move.

Q. What proportion of your receipts did you carry over?

A. I really do not know; I didn't see the papers; I got a bite to eat and came over here and I do not know what holdover there was, but there was a moderate amount left.

Q. What was your holdover?

A. I have one load.

Q. What kind of hogs?

A. Medium weight hogs, only fairly finished.

Q. Did you get a bid on them?

A. Yes, sir.

[fol. 1325] Q. What time did they arrive?

A Early this morning.

Q. You had the benefit of the shippers market and the late market?

A. Yes, sir.

Q. And you didn't get a bid that you believe justified your selling them?

A. I had only one bid on them which looked ridiculously low and, for that reason, I have them left over.

Q. Do you think that based upon the years that you have been in business, charging commission rates, that it would be fair to say that because the business done by you as a salesman has decreased in volume, due to the increase in the difficulties and an increase in the number of sales, that because of those conditions your average per man or per salesman is lowered, that that ought to serve as any possible justification for a lowering of rates per unit of business handled?

A. I would like to have had an opportunity—I don't think it can be had—for any or every one of these gentlemen to put in a day over there with some of us when we have real rard work. I think they could judge very well in regard to it. The efforts and the work that every individual puts forth now, in proportion to the amount of busi-

ness that they handle is easily five times what it was ten years ago, and it seems to me that everybody is supposed to get paid for their efforts and, if there is such a thing as getting fair compensation for the efforts that are put forth there now, there is nobody getting it.

Q. Do you do any soliciting yourself on the road?

A. A moderate amount. I have very little spare time to get away. I get away a little.

[fol. 1326] Q. Did you keep the expenses of your company as low as it was possible to keep them in the rendition of good service to your patrons during 1931 and 1932?

A. We have always kept them that way, when we could keep from hurting our service, why, we have the expenses as low as we could.

Q. You don't feel that you have got too many hog salesmen or too much help in any capacity working for you?

A. I do not. Sometimes we need more, but we cannot afford them.

Cross-examination:

Mr. Castenholz and I employ the people who work for us. I spend all of the market hours each day in the yards from eight to three. I don't know that there is any real beginning time, but we are supposed to quit at three. I spend all the seven hours in the yards, nearly every day—Saturday nobody does.

As to how we divide the work among our salesman, our three hog salesmen, it is a matter nowadays of being able to catch the buyer while he has got an order. One fellow has got his eyes out for the this fellow and the other for another fellow, and it does not make any difference, he is going to show him the class of hogs he thinks he wants. My boy makes a special day of selling the packers, although if we have got two or three loads of good hogs, and he [fol. 1327] thinks the buyer has an order for two or three loads of good hogs, of course, he is going to grab him. The same on the packing end. If I see some fellow standing, I am going to grab him in, and try to get him on them. We all work together on practically everything. The buyers are liable to be any place when we grab them, maybe along in front of your alley, maybe away somewhere, maybe a few blocks away from your alley and you ask them if they

want something. If he does you take him to your pens. We do not go and get buyers who are in the alleys of some other commission firms until they are through trading with the people whose alley they are in. My partner and I agree on what we pay them when we hire employees. As far as the salaries that we pay everybody, we are trying to pay them what they make themselves worth to us, it will apply to them just the same as everybody else. As to the difference in salary of my two salesmen, it would be very apparent that a man thirty-four or thirty-five years old could do a great deal more work than a man of seventy. One is seventy and the other about thirty-four. The man seventy years old cannot hustle around like the younger fellow. Mr. Mahoney and I also are out here at 5 o'clock on Monday mornings, hustling, down yarding and taking care of [fol. 1328] and shaping up stuff—but one day a week is about all we can stand. We cannot stand it every day. I mean by that we do not come down that early every morning. On the other days I come down from half past six until a quarter after seven, and sometimes stay until twelve o'clock at night. Mr. Mahoney comes to the yards every day and sells hogs every day. The occasions when I stay until midnight are caused by finishing up the work and getting the bills out and the letters off. You cannot write letters until you get the bills. That happens too frequently I am sorry to say. Last Tuesday, for a sample, I would say I probable got here at 7 o'clock and we ha a very large amount of picayune truck stuff, a terrible lot of it. We got to the house from the hog alley at four o'clock with a stack of tickets big enough to choke two or three hogs. I got out of the office at a quarter to twelve. Mr. Mahoney helps in the office only in writing letters to his own friends or customers. He did not stay as late as I did on Tuesday. I write a letter on each consignment of truck stuff. That is I write a letter to each owner. I dictate letters and I also write them myself on the typewriter. I write all the hog end of the letters and a certain amount of letters in regard to business affairs.

[fol. 1329] Q. Do you recall how many hogs you had by truck last Tuesday?

A. I could tell you—I don't know now; there is a mess

of them, I can tell you, there was a lot of owners, I know that.

(Witness makes computation from book.)

A. (Continuing:) 301, if I footed it right. I think I did I went over it up and down.

Q. 301 head?

A. Yes, sir.

Q. And do you know how many ownerships there were?

A. I will have to do a little counting then.

(Witness consults book.)

A. (Continuing:) Thirty-nine, if I counted right here, and possibly more than that because there were two lots—yes, it would be some more, possibly up to 50. There is two lots billed to Waterman Shipping Association, there is one lot of 27 and one of 52. They ship their stuff in, and I rather think, if I remember right, in that 52, there were about ten owners in that. He lists on the back of his sheet the different owners, and the marks for them, so I really counted them as two where there probably were ten or twelve or maybe fourteen in those.

Q. And did you have any carlot hogs that day?

A. Yes, sir, I did.

Q. Will you tell us how many, please?

A. I will.

(Witness examines book.)

A. Five and three pieces.

Q. You mean five carloads?

A. Five carloads and three pieces.

Q. Were those single or double decks?

[fol. 1330] A. All singles.

Q. Could you tell us without any difficulty how many head were in the five loads?

(Witness makes computation from book.)

A. 245 head in the five loads and three pieces. The big end of them were packing hogs, heavy packing hogs. There was one load with 33 hogs in.

Q. About what weight would those 33 average?

A. I think that load ran up close around four hundred.

Q. Mr. Mahoney receives a salary and also a part commission?

A. Yes, sir.

Q. Does your firm sell hogs for anybody else?

A. Yes, Adler Sons and Company. In other words, their business is cleared through us.

Q. And your salesmen sell his hogs?

A. Yes, sir.

Q. Did these consignments which you mentioned last Tuesday include any hogs for him?

A. I think he had three truck bunches in there, if I remember right.

Q. And they were added into what you gave us?

A. Yes, sir.

Q. Now, do you recall what time you got through selling on Thursday?

A. Two minutes to three, just before the whistle blew?

Q. And did you, then, sell all of them?

A. We disposed of all the hogs that day.

[fol. 1331] Q. And did you, then, go to the office?

A. Yes, sir.

Q. You did not go to the office until that time?

A. I did not go to the office until four o'clock. It was four o'clock when I got to the office, when I finished up weighing.

Q. How many people in the office make out account sales besides yourself?

A. Two regularly, and my son sometimes and I sometimes.

Q. And on that particular day, you worked until 11 o'clock, was it?

A. I worked until a quarter to twelve.

Q. And was all that work in connection with remittances?

A. Remittances, getting the bills down and making the letters and I fortunately had my supper at twelve thirty that night.

Q. And were your remittances mailed as you got through at the office.

A. Yes, sir, mailed, I dumped them at the corner when I went out, in fact, I did not dump them, I gave them to the policeman to give to Swift's mail man.

Q. How many of your office force remained that late?

A. I think the latest one besides that left about fifteen or twenty minutes before I did.

Q. Did all your office force stay and work?

A. No, sir, there were three of us there until perhaps eleven twenty.

[fol. 1332] Q. But as a rule you do sell all the hogs you receive, do you not?

A. Eventually. You eventually get rid of them or you could not make returns, but a great many days you have to carry some pieces and odds and ends over.

Mr. A. E. Holbert, a witness called by the Respondents, testified as follows:

Direct examination:

I reside in Chicago and one of the partners of Holloway and Ogren. I manage all the cattle business and am a cattle salesman. I have been selling cattle nineteen years.

I started with Morris and Company in the buyer's office. I used to follow Bill Mallory and Nelson Morris. I did that for about four years. Then I went to work for a commission firm as a yardman. I first sold butcher stuff for about eight years. I have sold all kinds of cattle, steers and butcher stuff. I have been with my present firm for twelve years. I sell the steers and some of the butcher stuff, sometimes all of it and sometimes just the steers, according to the way the business runs for the day. James Kane is the other cattle salesman and he sells cattle. He is supposed to sell the calves and bulls and some of the cows under the different grades of cows. We have a yardman in the cattle alley. I help yard cattle and help weigh them. I do everything.

[fol. 1333] A very large proportion of our business in 1932 was in plural ownerships, cooperative shipments. That consists of livestock shipped by rail and owned by more than one person. Mostly association. Most of our business comes from Illinois and Iowa and Minnesota.

Q. You had 17 cars of cattle which was single ownership No. 1, meaning that they contained cattle and calves only in mixture, single ownership; and you had 115 cars plural

ownership cattle and calves only. Now, in that kind of business, who sells the calves or did sell the calves in 1932?

A. Mr. Kane.

Q. And who would sell the butcher stuff?

A. As I stated before, it depends a good deal in regard to the way they are running, whether the cattle are running to steers or she-stuff. If they run to steers, why, I just sell the steers and he helps with the butcher stuff. We just have to arrange it that way. At all times he keeps posted, of course, and I always sell something. The two of us are salesmen.

Q. During the month of December, 1932, you had 2¾ carloads of straight carloads of cattle under the first item on the work sheets, ¾ of a carload, there were 18 head, 4 owners with 18 drafts. In the next car, there were 31 head, 4 owners, one account sale, and three of the animals were sold in three drafts and three were sold in one draft, 2 were sold in one draft, 7 sold in one draft and 13 sold in one draft. The third car that you had that month contained 25 head. [fol. 1334] The first parcel was sold, 6 head in 6 drafts; the next was 6 head in 3 drafts; 3 head in one draft; and 7 head in one draft; and 3 head in 3 drafts. Do you have any recollection of those cars, independent recollection of them now?

A. You haven't got the name of the consignor?

Q. No, sir. Now during the same month of December you had 5 cars of straight cattle, single ownership; the first car contained 26 head; 4 of them were sold in 4 drafts; 22 of them were sold in one draft; and, in the next car there were 27 head; 3 of them sold in 3 drafts; 6 in 2 drafts; and 17 in one draft. In the next car you had 29 head; 5 were sold in 5 drafts; 4 were sold in 2 drafts, 3 sold in one draft, 4 sold in one draft and 6 in one draft and 7 in one draft. The next car contained 21 head; 2 of them were sold in one draft; 19 in one draft. The next contained 24 head; 16 in one draft and 8 in the other.

Now, in the case of Mixed No. 1, cattle and calves only, during December you had one carload that contained 23 head of cattle and 10 head of calves. In that load there were 9 owners of the cattle and 4 owners of the calves. In the next 16 head of cattle you had 16 drafts, 4 head of cattle you had 2 drafts; 3 head of cattle you had one draft. In the case of the calves 4 calves you had 4 drafts and for 6

calves you had one draft. The next load contained 22 head from 8 owners, in cattle and calves and had 14 head of calves from 9 owners. You sold the 10 head of cattle in 10 drafts, 4 head of cattle in 2 drafts, 3 head in one draft and 5 head in one draft. The calves, you sold one head in one draft, 6 head in 2 drafts and 7 head in one draft. The next car had 22 head of cattle from 5 owners and 5 head of calves from 2 owners. The cattle were sold 4 head in 4 drafts, 8 head in 2 drafts, 6 head in one draft. The calves were sold 2 head in one draft; and 3 in one draft and the last car which you had that month contained 27 head of cattle and 9 calves; 27 head of cattle were from 5 owners; 8 head were sold in 8 drafts, 2 in one draft; 6 in 2 drafts, 4 in one draft and 7 in one draft.

[fol. 1335] The 9 head of calves were sold together in one draft. During the month of December, you had calves which arrived by truck; during the entire month, you had two consignments that were sold at one draft containing five head each, which was the largest number you received and in each other instance, with the exception of one 2-head consignment of calves which were sold, was weighed separate. Do you know whether or not those calves sold by Holloway and Ogren are sold separately for ownership or are they sold together? Do you know anything about that?

A. I cannot say, but I have an idea; I was not there at the time and didn't sell them, but lots of times you could sell three prime calves together to the same man and belonging to three different men. They would have to be weighed separately.

Q. In the case of truck cattle for the month of September, the record shows that, without exception, in the case of 75 head, 46 transactions, each animal that is received was sold and weighed separately. There were two instances during the month where you had 6 head sold in 5 drafts and 3 head sold in one draft, and, other than that, they were all sold separately and weighed separately according to this record. Now, do you know whether or not truck-in cattle would be sold together and weighed separately?

A. Why, it depends; if there is two cattle of the same weight, it would be killed for the same purpose and exactly the same quality of fat, they would be sold together and would have to be weighed separate to get the weight.

Q. Well, if you had a separate scale ticket for each one of these animals, with the exception of 9 that sold in six

drafts, do you believe that those animals were actually sold separately?

A. Yes.

Q. Or do you think that they were sold together and weighed separately. I will let you look at the record so that you can tell.

[fol. 1336] (Respondent attorney handed record to witness.)

The Examiner: Can you answer that now?

The Witness: To the best of my knowledge, I think they were all different owners.

Mr. Boyd (continuing): During the month of October, according to the work sheets, you had 112 head trucked-in that were sold in 79 drafts from 50 owners. Do you think that would be the case in October as well?

A. Yes.

Q. The record here shows that you had 45 straight cars for the entire year, single ownership, cattle, containing 1103 head and that you had 278 drafts to dispose of them, which would be less than 4 cattle sold in a draft. How do you account for that small a percentage of business which contained such small drafts, small number of head per draft.

A. In most of these cooperative shipments they run from 8 owners; I think we had one car with 55 owners of calves in it and we have to weigh them separately and sort them up. You can grade them pretty close; lots of times you will find a man that will have a car that is graded into canners and possibly a heifer or two and a bull, maybe a couple of calves, and a man that buys the canners, he will not look at the heifers, and the result is they are sold to four or five different people.

Q. How much stand-by or idle time do you think that you and Mr. Kane had during the market days of 1932?

A. What was that question?

(Whereupon the question was read.)

A. I could answer that in regard to the market day, that it is invariably 2 o'clock before I get in from the cattle [fol. 1337] alley anyway; that is early, 2 o'clock, from six to two, what percentage would that be?

Q. Well, you and Mr. Kane averaged 206 carloads a piece for the year; that would be 412 cars for the firm. Now that is counting the truck-in business as a carload.

A. Yes.

Q. And it is reducing your mixed cars into the carload equivalents. Do you believe that you and Mr. Kane were pretty busy selling that stuff which you sold?

A. Yes, sir.

Q. Do you think that to reduce your business to carloads is a fair way to treat it?

A. You mean to take a half a load or a quarter of a load of cattle with these truck loads and count the number of head as a carload, is that what you mean?

Q. Yes.

A. I don't think that would be a fair way.

Q. Or you take, say, 25 to 26 cattle that arrive by truck and call that a carload, or you would take the same number of cattle, for illustration, that may have come in two, three or four owner lots in a carload, and call 25 of them a carload, where it might take six, eight or ten pieces to make a clearance?

A. If those cattle all arrived at the same time, you might call it a consignment of cattle, whether it is one car or two, equivalent to two cars, providing they are all here and all together, but invariably when you go to figure out a carload of cattle from the trucks coming in, they are coming in all day long and you just—if you do say one carload, the way you have got it figured out as one carload, you might have [fol. 1338] to go and get a cow buyer five times or seven times or ten times and try them all. You not only get Armour's but Swift and Wilson, and if Hy-Grade happens to be buying that certain kind, you figure he is the best man, and you may have to get him five times, which is some job in itself to get him there five times.

Q. Then you think that to reduce your business to a carload basis and discuss the number of cars you handle is or is not a proper unit of work that you have to do?

A. I don't think it is.

Q. You don't think it is?

A. No, sir.

Q. Do you believe that the number of sales you have to make in order to sell a carload would be a better basis?

A. The number of sales I think would be.

I could not say off hand how our receipts arrived on the different days through the years 1932 as to mixtures.

Any time I don't think I am getting the market for them I hold them over. That does not happen so very often. Our shipments are arriving in the same mixed up condition that they arrived in 1932.

Q. Your average and Mr. Kane's average was about one carload on every market day for the year, assuming that there are two hundred market days in the year, you sold a carload, and Mr. Kane sold a carload, whether it [fol. 1339] came by rail, by truck, in mixed cars or seconds, or how you received them, your average for the year was a carload. Do you believe that that business as it arrived kept you and Mr. Kane fully occupied on the Chicago market most of the market days of the year?

A. You are taking an average of so many market days in the commission business. Sometimes you have a light day, sometimes they run heavier and Friday receipts are invariably light, and they would cut your average. That would make your average smaller, of course, because there are Fridays when you would not get a carload of cattle, you may get a piece of a load or maybe no cattle.

Q. The Government has frequently asked witnesses: "Would you employ a cattle salesman if his record showed that he only sold one carload of cattle a day?" And I will ask you that question in view of the fact that your average is just about one carload a day?

A. In hiring a man, I would figure up possibly what his business would be for the year. I would never think of averaging so many per day, I would figure that he would have to be capable of selling more cattle than that, weather conditions, receipts of cattle, would have a lot to do with that. We have years, you know, when receipts of cattle are very small and naturally receipts of commission firms are lower also right along with it.

Q. You feel that due to the long period of time you have been in this business, the experience you have had, the ability you have to sell at the market price of the livestock that is consigned to you, warrants your remaining in business, notwithstanding the fact that you averaged but one carload a day?

A. I would think so.

[fol. 1340] Q. And do you believe that in charging the present rates of commission that you are rendering to the

man that employs you the same kind of service, whether you sold a carload or two carloads, wouldn't you think?

A. Well, I have customers that like to ship to a little firm. Whether it is true or not, they think I am going to surely get them the market, make a good sale, and my personal attention, which I always give anyone.

Q. Do you find that you hold your business?

A. Yes, sir.

Q. And that your patrons are satisfied with the service you give?

A. I do.

Cross-examination:

I don't know how the cattle business handled by our firm in the year 1932 compared with the previous years, whether it was larger or smaller. The partners in our firm arrange their compensation; Mr. Holloway gets 55 per cent; and Mr. Andrews, and I and Mr. Ogren divide the rest of it. The reason for that differentiation is that I went in with them with that understanding. Mr. Holloway and Mr. Ogren had been in business for years before I went with them, and then Mr. Ogren was just a minor partner. I [fol. 1341] would say that Mr. Holloway is worth more to the firm than I am. I don't know just exactly how to express it, but I think he is. Mr. Holloway does not go out on the road as often as the rest of us; he spends most of his time in the hog alleys until the market is over.

We made a couple of changes in salaries this year and we had some reductions in 1932. We had no employees in 1932 that we do not have now.

Redirect examination:

I do not think I did much soliciting in 1932 or in 1931 individually.

Recross-examination:

As to my feeling that I do not do too much soliciting personally, I figure we have three men in the hog alley and only two in the cattle alley and I always want to be there at least the first four days of the week. In fact I don't think I have ever missed those four days except a short period that I was sick, and when I make a trip, I either leave Thursday night or else Friday morning, if I

go by train, naturally, I leave Thursday night and get there Friday morning and get back here either Sunday morning or Monday morning, either way. As to whether I think the members of our firm could do less soliciting and still remain in business, I am of the opinion that you have [fol. 1342] to go out and see your customers every so often. At least there is always a better feeling among your customers themselves. We are always looking for new business. A trip is made with the purpose of seeing our regular shippers and also new business. I think that during the course of a year, I actually call on each one of our old customers personally. I mean who ship by carload. I also have customers who ship a whole carload of cattle by truck, even from Iowa. You naturally stop off and see him.

Ed Holloway determines the advertising policy of the firm. The only advertising that we do we use a market letter and a little road work. It would be impossible to pay a visit to all of our customers, you would have to call them a customer if they shipped in a cooperative shipping association, but there are men there that we never see; an association may ship a load with 15 owners and if you just happen to meet them, you hold conversation with them, but you would hardly go out and see them. I call on the manager of the association. I appraise the farmers' livestock regardless of whether other commission men have done likewise.

[fol. 1343] Mr. J. C. Eastes, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Glencoe, a suburb of Chicago. Am in the sheep commission business. Am one of the owners of W. R. Smith and Son at Chicago. The other owner is John Smith, who is located at Omaha. I have entire charge of the management of the Chicago house. I am a sheep salesman. We have a salesman and a yardman at the present time besides myself. C. J. Davies is the salesman. I sell most of the sheep. We receive sheep for sale, sheep and lambs from most of the middle states, and practically all the range territory and we get livestock from as far as the Pacific Coast

states. We do not receive cattle and hogs for sale. I have been selling sheep since 1903; my first connection with the livestock industry was as a yardman at Louisville, Kentucky. I was there four or five years. I went from Louisville to National Stock Yards, East St. Louis, Ill. I sold sheep there as a salesman. I remained in St. Louis selling sheep for thirteen months. I then came to Chicago with John Clay and Company in the capacity of sheep salesman. I remained there less than two years. I then went with the cooperative commission company in 1905. I remained there about forty months and then we organized the firm of W. R. Smith and Son in 1910. The other partners were W. R. Smith who is now dead and his son.

[fol. 1344] Since the organization of W. R. Smith and Son I have devoted my entire time to the sale of sheep at Chicago and soliciting. Matters of much importance I consult my partner, but matters of lesser importance I decide myself. I decide if there will be any soliciting out of Chicago myself. Mr. Davies and I do the soliciting from Chicago. I decide what trips he will make.

Q. Have you had any occasion to review the sales made by months, indicating the number of head and the number of drafts necessary to dispose of them?

A. No, I could not answer that.

Q. During the month of January, 1932, you had 13 singles and 62 double decks.

A. I do not know. I take it for granted that it is so, if you are reading it off.

Q. In single ownership selling. I am reading from the work sheets of the Government that are taken from your records. In those cars were 16,554 sheep or lambs, necessitating 155 drafts; during March you had 3 singles and 31 doubles, 7705 head from 22 owners, necessitating 76 drafts. During the month of May you had 31,824 head from 54 owners with 257 drafts, so that in the single ownership you had over four times as many sheep and lambs to sell in May than you did to sell in the month of March. During September, you had 3 singles and 112 doubles, 30,000 head with 279 drafts, and the following month in October you had less than half what you had in September, 3 singles, 56 doubles, 14,909 head, 33 owners and 153 drafts. Then in November, a month later, you had one single and 14 doubles, all together, or 3,990 head with 9 owners and 53

drafts. What caused the jump from or rather the decline [fol. 1345] from May to June, so that you had only 25 per cent in June of what you had in May and then in November only one-eighth or 12 per cent of what you had in November as compared with May?

A. Well, they are months, it just happens to be that sheep are from certain territories that are being marketed, we get more of them at that time than we do from other territories. Then there are sometimes other markets that have an effect, western markets that have some effect on that.

Q. Of the sheep that were trucked in in October, which was the third largest month, you had 541 head with 54 drafts; in November, which was your smallest rail month, in single ownership sheep was your largest in truck business, you received 1,168 head with 94 drafts; and in December, received by truck 670 head with 44 drafts. You sold, 3,483 head of second sheep, 43 owners in 84 drafts. During the year of 1931, the Government work sheets show that you sold on commission arriving in straight car single and plural ownership 370,669 sheep and lambs. During 1932, 215,007, a loss of 165,000. Driven-in trucked-in, you had 3,454 head as against 5,209 head. In the case of seconds, you had 8,267 head in 1931 and 3,483 in 1932. So that in each branch of the business you had less business than in the previous years. Can you indicate to the Examiner what brought about that condition in receipts to your company?

A. Well, the western markets have pulled quite a little stuff away from us and then the market conditions here are not so good. It might have been the case of more feeders; there are more feeders handled on the river markets than there are here, that is, nearer the center of the grain belt.

[fol. 1346] Mr. Luther W. Conover, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 110 Walton Place in Chicago. I am president of Alexander Conover and Company, a corporation organized under the laws of the State of Illinois. The name was changed from Alexander Conover and Martin in January

1922. I am the principal stockholder. The other stockholders are my wife, who owns a little stock, my son George, Ed Stewart and my secretary, Madie Dalk. I have been in the livestock commission business for 40 years, and have been selling cattle over forty years on the Chicago market. Our firm sells cattle, hogs and sheep. It has always sold cattle, hogs and sheep. I am not interested in any other firm at any other market at the present time.

I have six cattle salesmen. I have six at the present time, one is in the hospital at the present time. My salesmen are George Conover, Sam Savage, Ed Stewart, Fred Hatch and Powell Tully, and myself. I sell fat steers. George Conover sells fat steers with me and Sam Savage sells the stockers and feeders and a few odd cattle. Tully sells the [fol. 1347] calves and bulls. Steward and Hatch sell butcher stuff, heifers and yearlings and cows. There are three in the butcher alley and three in the steer alley. I would say we have eight yardmen. I think we have ten all told doing yarding for us. We had eleven in 1932.

Cattle represent the large part of our business. I don't know that we have made a greater effort in connection with the cattle business, but the heads of the department have always been in the cattle business and it naturally would swing the bulk of the business that way. They never had a partner nor a hog salesman that was interested in the firm any more than on a salary basis.

We have a butcher alley where all the heifers and cows and bulls and calves are put. The three over in that department sell over there, and we three, George Conover, Sam Savage and myself, alternate in the steer alley, and I will be showing one drove and maybe George another and Sam another. Yes, we work on the same cattle. May be I will take one buyer in on a drove of cattle, and when I leave George will take another buyer in on the same drove. When I let that buyer go, George has perhaps got another buyer in the alley showing him some other cattle, and when the buyer is gone, he will shoot him into the other cattle, and I do the same thing.

[fol. 1348] Our business is pretty evenly divided between Illinois, Iowa, Nebraska, Missouri and Kansas. I don't think there is a lot of difference. Possibly more come from Illinois and Iowa. Certain years, certain times, we get more

from Nebraska than we do from Iowa, just as the market warrants.

I have about forty families of three generations I have sold cattle for. They live mostly in the states of Illinois, some in Iowa and some in Kansas. I have usually sold some cattle for them each year during the past forty years.

When we get requests from persons who have cattle on feed or want us to examine them for one purpose or another, we send different ones; we send Fred Hatch sometimes, Sam Savage sometimes, and George Conover sometimes, and I occasionally go. I used to go very often, but in later years I have not gone so often. Sometimes Ed Steward goes out. On a big string of heifers in a certain locality they will send for him to come down. George or I determine who will perform that service and when they will perform it.

I am called the boss. I suppose I am. George though, has authority to do anything he wishes in the way of giving orders to any of the employees or any one else of our organization except me. He does not boss me much.

[fol. 1349] I observe from an examination of Government audit that for 1931 our firm had a net loss of $17,440. And in the case of 1932, firm 4, Government Exhibit 15, blue audit shows that there was a gain for that year. I cannot explain the difference between the two years. I know that for some unknown reason, we cannot, you know, in the commission business, it has been the history for years often firms would start to slip or they would start to gain and you couldn't tell any particular reason why, but I know we made a gain in 1932 over 1931, and the other firms were largely slipping. This year, we are doing the slipping ourselves, in 1933. We slipped 28 per cent this year from 1932, for the first six months of the year. I cannot analyze the situation; I am just a cattle man; I am not an auditor.

All the years I have been in business, the spring months have usually been light, that is our customers, it seems feed cattle in the late summer and fall and market them off the grass or corn. That is the only way I can explain it. We just happen to get a larger volume always from Illinois and Kansas territory through the late summer and fall months.

[fol. 1350] By referring to the blue audits for my firm I find that I spend $173,987.35 for the year 1931, and during

the year 1932 the total expense shown on the blue audit was $126,242.95. The total selling commissions, for 1931, were $134,833.37, and the total buying was $5,092.50, and the country commissions was $84.46. The corresponding figure for 1932 for selling is $139,795.87, buying commissions $4,018.50, and the country commissions $926.90.

Q. Why was it necessary for you to have so many cattle salesmen in 1932? The average was, for the firm 884 cars per salesman.

A. Well, it requires a lot of effort and a lot of time to be put on each car and each consignment, now, more so than it used to. We used to have buyers who would go out and buy 40 or 50 cars right off the bat from one man in the morning, and, now, the last eight or ten years, it looks like they will buy three or four loads and even the head buyers of the big packing companies, they will go in and buy two or three loads and come back and buy another load or two and like yesterday we had eighteen cars of steers in our alley and we had to carry six of them over, only sold 12 of them.

Q. Because you could not get a satisfactory price?

A. Could not get a satisfactory price.

Q. Do you frequently carry livestock over?

A. Well, no, I wouldn't say frequently; occasionally.

I don't know anything about cost accounting. I have never had occasion to figure the cost of rendering the various types of service which we render under the *the* various [fol. 1351] classifications of the tariff. I don't know the difference in cost of handling by our firm of a truck steer and a rail steer.

Q. In the case of straight cars of cattle, single ownership, in 1931 you had 87,060 head sold in 7,305 drafts, about 12 head per draft. In 1932 you had 93,049 head that were sold in 8,200 drafts, that would be a little less than 12 head per draft. Some of the firms whose records have been examined in this case show a very much smaller number of head per draft than in your case, in the case of your firm. What have you to say about the length of time that it takes and the ability of salesmen to sell livestock which requires sorting and selling in small lots as compared to sorting and selling in larger lots?

A. It naturally would take more time to sell them in smaller lots.

Q. Can a salesman in your judgment sell as many cattle where he has to make eight or ten sales to a carload as where he would make one or two sales to a carload?

A. No, he could not.

Q. Do you believe that as the number of sales increase per carload or carload equivalent, that the ability of a salesman to sell quantities decreases?

A. Put that again.

The Examiner: Read it.

(Whereupon the question was read.)

The Witness: Well, it is impossible for him to sell unless by chance he happens to strike a fast, active market, a greater number, with the same ability, that many different drafts.

[fol. 1352] Mr. Boyd (continuing): While the average per salesman which includes the trucked-in, the animals in mixed cars, the seconds, reduced to a carload equivalent, based upon the experience of your carload business, while your salesmen sold an average of 884 carloads per year, are you able to say how many each of your salesmen actually sold during the year?

A. Now, that would vary.

Q. Do you keep any separate record of the sales performance?

A. No, we could not do that.

Q. Your firm is operated for profit, of course?

A. Supposed to be, I hope so.

Q. Would you keep more cattle salesmen working on the payroll than you believed the circumstances warranted?

A. I certainly wouldn't.

Q. Do you believe that your firm gets a very large proportion of fed cattle that are sold in straighter lots than some of the other firms that do business at this market here, or do you know anything about that?

A. Well, I would imagine that our firm gets more than the majority of other firms of fed cattle, perhaps.

Q. The fed cattle are sold straighter than any other class, are they not?

A. Yes.

Q. Cattle out of a feed lot, they are more often sold together than other classes?

A. Yes, sir.

Q. Butcher cattle require the greatest amount of sorting [fol. 1353] and cutting into separate classes?

A. Sorting and cutting and weighing.

I would say the last four months cattle feeders have made a profit but the first two months of the year they probably showed a loss, most of them. Since the advance in all commodities, the feeders, I think have largely made money. Very few have lost money, I think.

Q. Are you able to say, or do you know, the length of time it would take to sell a carload of cattle on any market until you have met the condition on the market, seen the cattle, and worked them out on the market?

A. Well, no, I can't say what the average time is, I guess because you might happen to get some order buyer and sell one load of cattle and work them all the rest of the day and not sell any more until maybe two or three o'clock in the afternoon.

Q. I will ask you to describe the conditions as you recall them yesterday where you said you had 18 loads of cattle, and had to carry one-third of them over?

A. Yesterday we had 18 loads of steers and we sold one load of cattle about 10 o'clock and we sold one more load about 12 o'clock. We worked on all the rest of them and finally about half past two we sold all but six loads—from then until 3 o'clock, oh, about a minute of three, when we finally wound up and sold the last three loads of cattle that we sold for the day.

Q. Can you recall the number of buyers that you showed these cattle to, and when you first showed them?

A. Well, not the number, but we showed them to all the order buyers as well as all the big packer buyers, and we had the big packer buyers back two or three or as high as four times.

[fol. 1354] Q. Do you remember the various bids that were made on the various cattle?

A. Well, one big packer buyer early in the morning, that is, I say "early" it was about ten thirty, bid us six cents a pound on two loads of cattle. We worked on them until we got that raised. About twelve-thirty another packer

buyer bid $6.10 for them and at two thirty we sold them to the original bidder of six cents at 6¼ cents. We had two other loads of cattle that we were bid six cents a pound on by one of the big packer buyers, and we worked on them until we got the other packer buyers, and they did not bid on them, we got the order buyers, they did not bid on them. Finally we got another packer buyer back there at two thirty or two thirty five, around that time, and we sold them at 6½ cents, and six cents was all we had been bid all day on them.

Q. The work papers show in this case, the analysis of account sales for the various firms, show that livestock arrived in various mixtures necessitating a great variation of sales for the various types of business that was handled. In the case of firm No. 42, which handled 45 carloads of straight cattle, single ownership, during the year, for the entire year, the record shows that for 4¼ carloads during January, there were 108 head of cattle from five owners, necessitating 31 drafts, or about three head to the draft. They had three carloads in August that came in straight cars, single ownership, with 69 head, necessitating 16 drafts. In October they had 111 head from four owners that were sold in 34 drafts. Do you believe that if the business of Alexander, Conover and Company came in such classes, in carloads as to necessitate making the large number of sales to sell the various carloads that firm No. 42 had, do you have any idea they would have anything like the salesmen performance that you had 884 carloads?

A. We would either have to have more salesmen or we would have to just get a ticket for them instead of selling them.

[fol. 1355] The fact that it takes one salesman all day long to sell one carload broken up in fifteen or twenty pieces would not indicate that the service he renders to the shipper is not worth the price that he charges. As the number of drafts increase, it becomes more expensive. It takes more time and effort and more salesmen.

As to whether I think that on most market days of 1932 that our salesmen were fully occupied in the sale of cattle, perhaps three days a week; they were the big days. Mondays, Wednesdays and Thursdays. Tuesday is a smaller day on account of the eastern order buyers, it gets to New York too late to kill that week. With certain classes of

cattle we advise not to be there with shipping cattle on Tuesdays. What we call shippers is good enough for the eastern demand. As a rule, the shippers write and advise us that they want to ship on a market day and ask us to recommend the day, and we recommend, Monday, Wednesday, and Thursday. With butcher cattle, or what we call butcher stuff, what they call the house cattle, we let them come Tuesday; we don't try to stop them.

Cross-examination:

On the day that we held cattle over recently, there were six carloads held over. They were all good cattle. My son [fol. 1356] George and myself worked on them. We showed these cattle to several buyers through that day—all day, and we did sell other cattle on that day. We don't work all of our time on any particular load. Of the six loads, we were bid $6.50 for one load of cattle, $6.00 for another load, $5.85 for two loads, and $5.80 for one load of cattle. I believe that was all we held over. They are not yet sold. We received them yesterday morning. I left the yards at ten o'clock and they were not sold at that time. They would be classified as desirable, all good enough for shipping cattle.

I usually handle the loans for our office. It is pretty hard to tell what part of my time is spent in handling loans. Some days it is a good deal of the time and other days very little. We don't loan extensively. On the basis of the year's time I would say that I use ten to fifteen per cent of the time handling loans. The rest of the time I spend writing letters, posting our customers and talk to our shippers and try to advise them on what I think is right in the way of handling and so forth. Most of my time is spent in making sales. The practice of our firm is to have all three salesmen work on the cattle we have for sale. I have in mind the three salesmen. With reference to the butcher salesmen [fol. 1357] they do not work at the same time. You cannot take two buyers into a pen at the same time, no; but you could take two buyers and one will go into one pen with a buyer and another will go into another pen with a buyer. It is not safe to say that we would alternate, or that they would alternate. You couldn't even say that, because it might just happen to occur that one man would have a string of cattle down in his end of the alley and when the

other party below had finished with one, he had finished with this one that he had and he had grabbed the fellow first and say to you "Go along with that string." Outside of George Conover, I have two salesmen that came up through the ranks and one was a cattle buyer. Hatch was a cattle buyer for one of the smaller abattoirs here in Chicago, and the other one was at one time working for another commission firm as a salesman. None of these salesmen brought any business with them when I procurred them as salesmen. They were all practically yardmen; and grew up just in the livestock business. That is also true of my son George.

Our firm handles sheep. We have a sheep salesman, W. B. Burns. Eddie Schultz assists our sheep salesman as yardman and assistant sheep salesman. In cattle I think George and I sell the same number. Perhaps George sells a few more than I do now, but in the butcher alley, it is [fol. 1358] about equally divided between Hatch and Stewart. Tully sells all the bulls and all the calves. We have a little more steers than butcher stuff. We have one hog salesman and one assistant, who acts in the hog alley as Eddie Schultz does in the sheep. Sells about five per cent of the hogs.

George does a good deal of buying of stock cattle and I do some; Sam Savage does the most of the steer buying and Fred Hatch and Ed Stewart both buy heifers and light stuff that go back to the feed lot. Hatch and Savage buy most of the steers I would say. Mr. Hugill buys the hogs. And the sheep buyer is our sheep salesman.

Our sheep salesman sells some for other firms, but none of our cattle or hog salesmen do.

In case I had cattle owned by several different men in our pens at the same time, they might all be sold at one time but at different prices. Then they would be weighed in different drafts, the way they are sorted.

I am the active manader of the firm. Yes, we mad- some little reductions in our expenses since the year 1932. We did not reduce the salaries of salesmen; we let out one or two yardmen, we did not let out any salesmen. Either my son George or I hire or fire all of the employees.

[fol. 1359] In fixing your rates and charges, I do not believe that the draft should be taken as a basis rather than the carlot. I would say that maybe I didn't make it plain

before that I thought it requires one with greater experience and better judgment and much more dependent upon his ability as a salesman to sell a carload than it does to sell a parcel. As to whether it would be my view in fixing the schedule of rates and charges for the commission men. the best schedule should be based on the number of drafts or on a head basis or on a carlot basis, I don't know; it requires more time and all to sell parcels, but perhaps not as competent a man to sell parcels as it does straight carloads. As to whether in my judgment more time is required to sell a carlot to a single buyer than to sell a draft. or say, a small parcel to a single buyer; I do not know as it takes any more time to sell one cow than it does seven steers; I mean if the seven steers are all alike.

Mr. Miles (continuing): Based upon your own experience, how many parcels of cattle would you expect a man to sell in a day?

A. Well, I don't reach any expectancy about what I expect a man to do. It just depends on the condition of the market. If I can select the days to have a big string of cattle, you should sell a good many cattle.

Q. How many?

A. And, a day like yesterday, you cannot tell how many, but a day like yesterday it was pretty hard work to sell a few cars of cattle.

[fol. 1360] Q. At the present time, is it your view that all of your salesmen are efficient and qualified to handle the livestock that you permit them to sell?

A. I think so.

Q. You told Mr. Boyd, in substance, that you do not retain any more salesmen——

A. We don't retain what?

Q. Any more salesmen on your payroll than you think necessary.

A. No, sir.

Q. You have also told us that your volume had fallen off during the year 1933?

A. Yes, sir.?

Q. About how much, in your opinion, would your volume have to fall off before you would drop a cattle salesman?

A. Well, if it would drop off much more, I would have to do it.

Q. What do you mean by "much more?"

A. Well, if business don't pick up, which it might do before the end of the year, we might have a fuller business in the fall of the year, and you cannot go out and get a man that you have confidence in to handle your sales in a few days.

Q. Now, how much would your business have to increase before you would take on another salesman?

A. I don't know; I couldn't tell; that would just be a mere guess and it would not amount to anything.

Q. If you could be assured of an extra hundred carloads for the coming year, would you put on an extra salesman to handle that extra hundred?

[fol. 1361] A. No, sir, because I feel that we ought to be able, after handling it last year, maybe to get by; I would feel like we had slipped this year and that with the volume of business that we did last year we ought to be able to handle it with that amount of salesmen but if it warranted an additional salesman, I would try to get the right kind of a man if it was necessary in the conduct of the business.

Q. You handled more cattle last year than you have this year?

A. Yes, sir.

Q. That is based on the number of months that have elapsed?

A. Yes, sir.

Q. And, with the same number of salesmen, is that correct?

A. Yes, sir, but this year we have to cut them up more than we did last year so that really required all the efforts of the salesmen today.

Q. And you did handle them last year with the same number of salesmen?

A. We did handle them last year.

Q. There were some days, Mr. Conover, when your firm received no cattle at all by carlot?

A. About the only day is, practically, Saturday.

Q. And, on a Friday, just how will your salesmen be employed, will they go out soliciting, or just what?

A. Well, sometimes they go to the country to solicit business; not often, but a few days, perhaps; other days, they will have a couple of days rest, and I suppose there is more rest than there is soliciting in those two days.

[fol. 1362] Q. You have no idea what the peak business day has been for your firm this year?

A. No, sir, I don't; I don't know anything about what the peak days have been this year.

Q. And, on the peak days, your firm, with the present number of salesmen, will handle what comes, will they not? It is seldom that you hold over livestock?

A. Well, I would not say seldom; we occasionally do, and I could not say now, perhaps, in the butcher alley, I expect it will average one or two days a week, holding over butcher stuff, and in the steer alley not so often.

Redirect examination:

It is harder now to operate and manage a business than it has ever been in my forty odd years.

Mr. J. R. Clegg, a witness called by the Respondents, testified as follows:

Cross-examination:

Q. Now, you have told Mr. Wilson that if you had a small increase in your business, that you would have to have extra help, is that correct?

A. Yes, sir.

Q. What did you have in mind by saying "A small increase in business?"

A. Well, anything over the regular routine of work that we have.

Q. May I ask you if your firm received one carload of cattle per week more than they now receive, would you hire an extra salesman?

A. No, that would not be considered a small increase, that would be a very small increase.

[fol. 1363] Q. Well, then, will you differentiate for us the difference between "small" and very small?"

A. Yes.

Q. Just what did you have in mind by saying "small increase?"

A. Well, a small increase in the business would be a noticeable increase, something like a 10 or 15 per cent increase in receipts.

Q. I see, and if you had a 10 per cent increase, you believe you could get along with your same number of employees?

A. I don't think we could without hiring extra help.

Q. If you had nine per cent, do you believe you could get along with your present force?

A. I don't know whether we could or not. I have not figured it down like that.

Q. That is getting into the dividing line, is it?

A. I say I have never figured it down there.

Q. What kind of help would you employ, that is, for extra receipts?

A. Yard help, only.

Q. You would not increase your sales force?

A. No, we would not increase it unless there was an abundant increase in the business.

Q. All right, about how much, in your opinion would your cattle receipts have to increase before you would take on an extra cattle salesman?

A. I could not say as to that.

[fol. 1364] Q. You have told us that your salesmen could sell a lot more of cattle in 1923 than at the present time. What did you have in mind by saying "a lot more?"

A. Well, in 1923, we sold them in more on a wholesale order. We would sell a load of butcher stuff together or we would sell three, four, five or six loads of steers together, where now we have to sort, maybe the load of butcher stuff would have to be sold in eight or ten different lots and the steers would be sorted according to size.

Mr. J. C. Eastes, a witness called by the Respondents returned to the stand and testified as follows:

Direct examination:

I am making every possible effort to reduce our general expenses. It was necessary to reduce the salaries of our employees during the year 1932. We made a reduction of about 15 or 20 per cent. In 1933 I cut the salary of the office boy $7.50 a week and salesmen $15 a week. I would not think there has been any reduction in advertising expenses from 1933 over 1932. Up to this time there has

been a reduction in traveling expenses for 1933 over 1932. I devote my entire time to the management of our business at Chicago and the sale of sheep. We are called at all hours of the night to answer telegrams or talk to shippers that are in transit. The large percentage of our shipments are loaded one thousand or more miles away. They like to be advised from Ogden, Utah, Laramie, Wyoming, or Valley, Nebraska, at those points, where would be the best market to send their sheep, and the trains come in at all [fol. 1365] hours of the night and they often call or telegraph us to call them. Laramie is a feeding station or division point. We suggest diverting the shipments that are billed to Chicago to other markets when we think they will net the owner the most money, regardless of whether we have an office there or not. We have an office at Ogden, Denver and Omaha, but we sent stuff to St. Joseph, Sioux City, Kansas City or wherever we think it would net the shipper the most money. We get no commissions out of those places except where we have offices. We have a shipment now in transit that a man is going to call me tonight or tomorrow morning whether they should be sold in St. Paul or brought on to Chicago. The way the present markets are, I will have to advise them to sell them at St. Paul. If he accepts my advice we will not get any commission out of that consignment; but we hope to get some on future dates on some other shipments that he might come on with.

I don't see how we can cut our expenditures made for yarding sheep, if we could I would. The expenditures we made for selling are in no way wasteful or extravagant. We try not to spend an excessive amount of money soliciting business. In connection with advertising we try to be very conservative and when the shipping season is over, [fol. 1366] in certain localities, we usually take those names off our lists and drop them until the season next year. I do not know anything we could do to render our service more valuable and useful to our shippers.

Cross-examination:

It is hard to say what time I spend in soliciting business, because I spend quite a few afternoons and evenings going to the feedlots and then there are times off the year. I could not say exactly. We have feeding stations on rail-

roads near Chicago thirty to seventy miles out that we are often called out and go there to get consignments. It is hard to say. Some nights we go out there at six o'clock in the evening and the train won't get in until three o'clock in the morning. It is hard to say how much time. That is not counted under the rules of the Exchange on consigned business but is counted on unconsigned business. We sometimes go out to the feedlots to endeavor to get unconsigned business, and under those conditions the Exchange rules apply. I do not use all time for soliciting which is permitted. C. J. Davies is my assistant. He sells all kinds. He also solicits business. I do not know what proportion of his time he spends in soliciting, but we try to take up his sixty days' time if we can. He has been to Idaho, Wash-
[fol. 1367] ington, Montana, Wisconsin, Iowa and Illinois. Most of the trips that he has made west have been in June and July, I mean in the northwest. He has not made that trip, though, in two years. He has some clientele of his own in this way: he was head buyer for Armour for thirty years and he would naturally have some people that are acquainted with him. When he is not soliciting, he is on the market every day. I sell the greater part of the sheep for our firm. I should think I would sell 60 to 75 per cent, I could not say. He sells all classes and grades of sheep. During the range season it is generally understood that I sell the range sheep or lambs and he sells the natives. At other seasons of the year, as a rule, I sell the fed westerns and he the natives, but in those days we advise with one another. I advise with him if he sells the natives or if I am selling them he advises me, and we work together. He might make a sale that I had been working on for two hours. Mr. Davies does some yard work. Yarding sheep, sorting, we all do that. I do that too. Mr. Davies does very little office work with the exception of letter writing. Writing letters is the only office work I do.

I usually try to get to the office between seven and eight and leave some days, it is early, and some days it is late, as late as nine o'clock, and sometimes I leave at two or three. Our firm sells sheep for other firms. For Lawler, and
[fol. 1368] Drovers, and Ingwersen Mosier and Ingwersen. For them we perform the same service as we would on sheep consigned to ourselves. I have reference to the work

in the yards only. The basis of compensation is fifty per cent. That is the basis regardless of how they arrive.

We discharged the yard man by the name of Barr last December and have not replaced him. Outside of Mr. Barr there has been no change in the personnel of our firm in 1933 as compared to 1932, except that I let the office boy go, but we have him back now. He was away, I think six weeks. In 1931 I think we had the same personnel. I am not positive. Very little change if any. Part of that year young Desmond that is now in the West, he might have worked for us, I don't know whether he was in this office then or not, I could not say, part of 1931.

Our firm does not do any loan business.

In a general way I have a part to play in the management of the other houses. I don't interfere with any salesmen they would put on in Omaha or any office force, but with Denver I would consult with my partner and at Ogden I consult with my partner. We have branches at those other three markets. We have no head house. We would fill orders to buy sheep for the firms that we sell for on half commission.

[fol. 1369] In 1932 we have an item of good will payments of $1200. That is to Mrs. W. R. Smith. We still pay her $100 a month. When her husband died she had an interest in the business. We have paid her a stipulated sum for that name. She could have taken the name away from us, or I suppose she could have. Her son is my partner. We have been making those payments since his death, I have forgotten whether it is six or seven years. As to how long they will continue, there is nothing said about it, as long as she has no other support. I think we have borrowed $2100 from her or something like that, I have forgotten just the amount. We pay her four per cent interest.

I try to go to Denver and Ogden once a year; I make those trips in connection with trips in the solicitation or conventions or something of that kind. If we can save railroad fare, my partner goes; he can go cheaper than I can from here and he makes more trips than I do.

There is a difference in the work required in the selling of a single deck of sheep compared to the selling of a double deck. It takes a longer time to examine them—the double deck. You cannot tell a load of lambs by looking

at one or twenty or fifty of them; you have to go over the whole outfit and probably in a double deck there will be twice as many owners as in a single deck. They will be [fol. 1370] maybe mixed sheep and lambs that have to be sorted and it takes twice as long to run a double deck through a chute as it would a single deck. Sorting would take most of the time, the weighing and sorting. With reference to the selling it takes more time to sell a double deck of sheep, I don't mean any one individual load, but I mean in general. I would not think it would take twice as long to perform the necessary sorting, selling and weighing on a double deck as on a single deck. It is owing to how badly mixed they were. You cannot base it on a general proposition; one load might have twenty different kinds in the double deck, and the next double deck might be all one kind, I do not know; I could not say. There is a large part of the sorting that is done before the sale. We often show lambs that we think we can sell with little sorting. We find out we cannot and we will take them over and sort them and reshape them and put them in better selling condition and put them back on the market, but I would say most of the sorting on mixed lots is done before we show them to make them look better. Years ago, we sold them all together, old ewes, young ones and all. I call a mixed lot where there are old ewes, yearlings, bucks, lambs, feeding lambs, breeding ewes, of all ages, and lambs of all qualities, killers, whatever it might be.

[fol. 1371] In connection with fat lambs, we often sell them with 10 per cent out or 25 head out or whatever the trade is made and then they are sorted after that. In the case of slaughter lambs, I would say that most of the sorting is done after the sale is made.

Mr. B. R. Hugill, a witness, called by the Respondents, testified as follows:

Cross-examination:

I sell about 75 per cent of the hogs received by my firm, Alexander, Conover and Company.

S. Bruce Stafford, a witness called by the Respondents testified as follows:

Direct examination:

I live at 9255 South Winchester, Chicago. I am the sole owner of Stafford Brothers. Stafford Brothers was first organized before I came. I came in 1887 and before that it was J. E. Stafford and Company. J. E. Stafford was an older brother; he passed away long ago. The firm has been in business at least fifty years. During that time we have handled cattle, hogs and sheep on commission. I have been, at various times, director, vice-president, and president of The Chicago Live Stock Exchange. I was president for three years within the last ten years; no, it was about eleven years ago I finished my last term.

[fol. 1372] We draw the major portion of our business from Iowa and Illinois. And the same with reference to hogs. We get scattered shipments from as far south as Mississippi, Kansas and Montana on the west. I have sold steers during the last ten years.

We have two salesmen selling cattle besides myself. One man sells she-stock; the other one assists me in the selling of steers. We have only one hog salesman at the present time. We have five yardmen, three working on cattle.

Mr. Otto, cattle salesman, has been with us at least thirty-five years, possibly two or three years longer than than. Mr. Ward has been with me seventeen years. Mr. Grant our hog salesman came with us at the close of 1931. We employed Mr. Grant to fill Mr. Jack's position as hog salesman. Ray Sarsfield is not with us now, we only use a man in his place as an extra man when we need him badly.

The business of Stafford Brothers was more profitable in 1932 than in 1931, although the difference was small. The gross commissions were less than $1,000 difference in the two years. The buying commissions were smaller in 1932 than 1931, the difference less than a thousand dollars. The amount of income from clearing other firms was greater in 1932 than it was in 1931.

[fol. 1373] We did not change any salaries in 1931, 1932 or 1933. The amount of time I put in as a salesman varies with the amount of cattle I have to sell, but I am usually outside until the market closes unless I have finished a

short time before that. I devote ten or twelve hours a day, commencing at half past six in the morning. It would vary according to the amount of live stock we have to sell or the market conditions under which we sell them; largely the market conditions. The entire management of the firm is my responsibility. I am always trying to get more business, increase it. I do all the soliciting for our firm in company with Mr. Ward. I decide when Mr. Ward will spend money for the purpose of going to the country. He goes with me to the country. He drives the car for me when I go. Our soliciting in the country is largely at the request of our friends that have livestock to market, and the trips are made at their request. While on that sort of a trip, we also solicit business from people who have livestock to be marketed. It would be impossible to separate the time devoted to actual appraisal or the trips to persons having livestock where there is a specific request to do so, and the time that we use in calling upon other persons living in the community. In the first instance, the trip is made necessary by request from patrons. I cannot respond to all those requests but I go as often as I can.

[fol. 1374] Q. During the year of 1932, the cattle sold by Stafford Brothers, arriving in straight cars, single ownership, numbered 13,211. They were from 422 owners and necessitated 1483 account sales, an average of less than ten to the draft, and the business fluctuated from 2002 head in November to 534 head in June. In your plural ownership, straight cars, they had 2080 head with 492 drafts, average of about four head per draft. Carloads of cattle and calves, which is called Mixed No. 1, had no other kinds of livestock in it; you had 3,700 head of cattle with 950 drafts, an average of less than 4 head per draft. You had 724 head of calves, necessitating 241 drafts, about 3 head per draft; that was single ownership. And, in plural ownership, you had 3510 head with 1283 drafts, less than 3 head per draft; and, in calves, you had 744 with 464 drafts, which was less than 2 per draft. During October, you had three single deck and one double deck of No. 2 Mixed, single ownership, which means cattle and calves, hogs and sheep in the same car, which contained 4 cattle, necessitating 2 drafts, 19 calves necessitating 6 drafts, 248 hogs necessitating 16 drafts and 73 sheep necessitating 7 drafts.

No. 2 Mixed, plural ownership, during the month of August, you had 7 single decks and 2 doubles, containing 39 head of cattle from nine owners with 14 drafts, 63 head of calves from 17 owners with 18 drafts, 564 hogs from 64 owners with 107 drafts, 76 sheep from 11 owners with 23 drafts. In the case of drive-ins for the entire year, you had 4610 head of cattle from 1,030 owners with 1,882 drafts, a little over 2 head of cattle per draft. You had 1,225 head of calves from 490 owners with 788 drafts, less than 2 head per draft. You had 15,402 hogs from 1,104 owners with 2,356 drafts, a little over 6, less than 7 head per draft. Speculator business, you sold 827 head from 163 owners with 227 drafts, which was less than 4 head per draft. In the case of calves, you had 34 head all year sold in 12 drafts for 10 owners, less than 3 head per draft; and 6,142 hogs from 163 owners, 216 drafts, averaging [fol. 1375] about 30 head per draft. Do you think that is typical of the way the business of your firm arrived during the year 1932?

A. Yes.

Q. And describes the conditions of mixtures which you indicate have increased during the past several years?

A. They have increased, yes.

Q. Does that necessitate more or less salesmanship effort and time?

A. More time and more salesmanship, naturally.

Q. Have you ever known a time in this business that was as hazardous as the present for an owner to conduct the business at Chicago?

A. There never has been a time as hazardous as it is now.

We try to get our business into the market as evenly throughout the months as is possible. We try to get and solicit business for what we believe will be our light months. We must maintain a force sufficient to handle what we think has been a maximum requirement. We have no requirements as to the number of carloads that our employees will handle. The volume of business which may be handled by a salesman depends upon market conditions, as well as the number of loads that we have, depends on how much help we need, salesmen we need. By that I mean the number of sales that are necessary to be made by salesmen, together with market conditions. The effort per car-

load in rail business and the time necessary has increased [fol. 1376] over the conditions that existed in selling in past times; it is altogether a different proposition now, and that condition gets worse as time goes on, in my judgment.

The ability of a salesman to sell has been changed to the determination of how many different small lots he can peddle, that is the condition now; that applies to the steer business as well as to the butcher business.

Cross-examination:

When I go to the country personally and talk to a shipper, I tell him I think I can get as much for them as any other competitor here, and I boost the Chicago yards as being the best terminal market in the country. There is always a market, for any livestock that they may send to the Chicago yards, and I believe that to be true. I believe the Chicago market could absorb more livestock than it is now receiving. I could not give you any idea as to how much more by percentage, only by going back to the old days. We could absorb as much as we did if we had the old competition. We could handle more business. With my particular firm, we would put on extra help if we had more business. We could handle more cattle than we are now handling with the same force. I cannot give you an idea of about how many more. Our firm in my opinion can handle more hogs than we are now handling with the same force.

[fol. 1377] I could not give you a percentage in that case. The three salesmen including myself sell the livestock for Stafford Brothers and the firms that we clear. We have one hog salesman, No. 5, shown as a hog salesman, but he has been physically unable to sell hogs or to do anything else for the past two years. His salary is shown on the blue audit, you might call it in a way, a pension. He did no selling during 1932 or 1933. One salesman did all the selling of the hogs for both years. No. 5 was taken sick some time in 1931. I don't just know when. It is true that consignments now come to us in smaller lots than formerly. You could go back ten years and it has been increasing yearly. I would say in 1923 they came more to an owner than they do now. It would be hard to answer as to percentage. We very frequently had a hundred head

of cattle in one consignment in 1923, and it is very seldom that we get that many now. It happens occasionally. You could possibly sell that many cattle in 1923 in an hour and now you might not sell them in 24 hours of two days. I think it would take more than three times as long to sell one hundred head today of cattle than it did in 1923, day in and day out. Four or five times as long. In 1923 we began to sell cattle very frequently at eight o'clock in the morning. Nowadays we begin whenever they will bid us [fol. 1378] or try to buy them, but is is usually eleven or twelve or one o'clock. Our market hours are whenever they start, whenever they will bid. There is no rule of the Exchange of the Stockyards Company that selling shall not commence until a certain time, not to my knowledge. We could not, if the buyers wanted to do it, and would go to our pens, begin actual selling at six o'clock in the morning, because we have not the cattle ready to sell at that time. That is the only objection.

We do not make many sales at ten o'clock in the morning. We do make some. They are made to order buyers and shippers. Traders begin buying early in the morning. Traders and order buyers will begin to buy as soon as they did in 1923. Only the packer buyers refrain from buying until around noontime. Largely all of our sales are made to packer buyers, the greater part of them I would say. I think fully eighty per cent of all of our cattle would be sold to packer buyers; I think fully that many, that great a per cent.

In 1923 we finished selling depending on the arrival of the cattle. We must prepare these cattle for sale. In 1923 they arrived at twelve, one or two o'clock in the afternoon, but we could not sell after three o'clock, but we would be on the yards trying to sell up until three o'clock. That is true today, but we must stop at three o'clock whether we [fol. 1379] have sold out or not. We occasionally hold over cattle. I could not tell you how often. I held over one load last week, that is about an average, yes, more than an average. Shippers usually leave it to our judgment largely. In the case last week the shipper last week asked me to hold over. Sometimes we hold them over when we feel we are not getting their value. In that case we could have sold them had we been willing to take the price offered, and the reason we did not sell them was due

wholly to the price. Usually we get better results, and it sometimes happens that we get worse results. Ten cents per hundredweight would cover the cost of carrying cattle over. We make an attempt to sell cattle the day we receive them unless we are instructed to the contrary.

There were more commission firms on the market in 1923 than in 1933. There were more employees in 1923 than today. The Chicago market is slipping, in my opinion. It is because of the conditions. I do not think that is due to the depression now existing. It will continue if they continue to buy direct in the country. And I think if buying is continued in the country, it will continue to slip, beyond a doubt.

My testimony was that it takes more sales today to sell a given number of livestock than formerly. We eventually [fol. 1380] sell all that we do receive, and that means that we work more hours in actual selling than we did formerly. I have also said there are more hazards at present to the owner of a commission firm than formerly. The country banks situation is one hazard. I mean that the bank may close after you have sent your remittance. The shipper usually requests his remittance by check these days. We draw the checks on either of the two banks at the stockyards, and we would send the check to the shipper. In the recent closing of this bank here, we had about $6,000 out in checks and we made them all good before this bank opened. We did not sustain a loss because the bank finally opened.

Q. In case the country shipper had a check on a bank that was absolutely solvent and good at the time he received it, and held that check for a month, and at the end of the month the bank closed, in those circumstances would you feel that your firm was responsible for that bank?

A. Morally, yes.

Q. And would you pay that debt if you were able to?

A. We would.

We feel like taking care of our friends when we can and regard the making of loans as being part of a commission business. We do not file any schedule of rates and charges with the Department of Agriculture covering loans. I [fol. 1381] don't suppose it is legally a part of the commission man's business. It would be a haazrd of a some-

what allied business. We make sales to different buyers that we are not quite sure we are going to get our money or not. That would be some order buyers and some small packers. The order buyers are supposed to be under bond to pay for their purchases. We sold to one yard trader that was under bond and his bond did not cover his obligations that day, so we had a loss. You cannot make any checks to determine whether the bonds do cover transactions, because you do not know how many he has bought that day. We knew in that particular instance the man was under a ten thousand dollar bond but we did not know he had bought twenty thousand dollars worth of stuff. In that case we sustained a loss of around one thousand dollars. As to whether I regard it as being a legal obligation upon me when we sell live stock for a shipper to make up for any loss that may be sustained; we always have and I think we are morally bound. We are supposed to know our men and make good, that is what they pay us our commission for. There is no custom on the yards to sell on credit. The rule is that we must pay by 11 o'clock the following day, or we must be paid by eleven o'clock the following day. I think the shippers are not familiar with that custom or that rule.

[fol. 1382] Redirect examination:

I have no way of limiting the liability of S. Bruce Stafford for any hazard that might arise that I know nothing about at the moment. My entire possessions are back of my business at the stockyards. We are under $28,000 bond and that was reduced because of the lower value of livestock from $45,000.00.

We must be absolutely broke before the bonding company will pay a cent. If the bonding company pays, if I have any assets, they will take them, and it must be plenty of hazard there because the bond has been raised from $3.00 per thousand to $10.00 per thousand. We must pay as long as we have anything to pay. In many instances bonding company requires collateral to the amount of the bond. The bond as a matter of fact does not protect me at all but actually protects the customer in case of default on my part.

We sold two loads of cattle for a man in Wisconsin last fall and he had the entire proceeds split up into $500 checks.

He said, "I will use them as I need them." There were at least two of those still in his hands when this bank closed for thirty or forty days or two months. He waited until the bank opened but others did not. The discount would not average a half of one percent on cattle paper handled [fol. 1383] by me; and possibly would not cover the actual cost to me of making a loan. Making loans on cattle is unprofitable.

Mr. William M. Gentleman, a witness called by the Respondents, testified as follows:

Direct examination:

I live near Crown Point, Indiana. I am a partner of William Gentlemen and Sons. There are five partners, my father and four brothers. I sell steer cattle. Father is the senior member of the firm and we have to give him the position as general manager, but we all participate in doing it.

William Sr. is the general manager, C. F., cattle salesman, A. M., hog salesman; and F. J., a cattle salesman.

Outside of the owners we employ only one salesman, Charley Mallory.

Of the total expense in 1932, four-sevenths represents the owners' compensation.

The cattle business of our firm is handled by three cattle salesmen, myself and two brothers, I handle the steer cattle and C. F. Gentleman handles the cows, bulls and calves; G. J. Gentleman handles the heifers and the light weight yearlings such as the heifer buyers buy, but at times we [fol. 1384] all assist one another whenever we are needed. Each one knows every day what the other one is doing and can assist at any time. I sell the steers generally from day to day.

William Gentleman and Sons have been in business since 1908. My father has been in the commission business since 1883 at Chicago continuously. In 1883 my father was with the firm of George Adams and Burke. He was with them from 1883 to 1894. He was with Shannon Brothers from 1894 to 1908, at which time he started William Gentleman and Sons. I was with Shannon Brothers prior to 1908; from 1899 to 1908. I started in as a yard man, later sold

hogs and sold hogs up until 1908. I started selling cattle in 1910, and I sold all our cattle from 1910 to 1921 or 1922, if I remember right. I was the only cattle salesman. That might be some slight exaggeration, my brothers were working in on them. Of course, they had the experience from the time the firm started, but they assisted me at times, but I was the main cattle salesman up until that time.

Since then the work got so complicated along about that time we had to divide it up. I could not handle it any longer the way I had been handling it. There are three of us selling cattle now, which I was able to do along in 1921 and 1922. A great many days I had more cattle to sell than we [fol. 1385] do now. I cannot say what the aggregate was, but a great many days I did. I could not handle it now. Where we used to have straight loads of stock, they started coming in divided up more. Before the co-operatives started lots of the farmers clubbed together and made up loads and then later on they developed into these co-operative associations that developed throughout the country and they have increased very rapidly. Then, whereas we had buyers who had greater orders, I could take a cow buyer into my alley and I might be able to sell him every cow I had in the alley. The same with steers. Well, then the packer buyers generally started to have their orders cut up. A buyer would come in and he would buy eight or ten cows of one kind and half a dozen of another and then he would be through, and you would have to get other buyers in order to complete your sales, and the grading of the different kinds of cattle became more pronounced. Where they used to buy them in two or three grades, they have inaugurated several grades. I could not tell you how many, there is so many of them. And where I would sell, as I say, one load of cattle to maybe one, two or three buyers, now, I might sell them to as many as ten or twelve or even more than that, that is, in order to effect a sale properly. And again you try to sell mixed loads of cattle now, you will not get the competition, as the buyers have [fol. 1386] all got orders for certain grades and if they go into a load of cattle and they do not generally meet the grades they want, they don't bid on it.

Q. Your commissions from single ownership cattle, arriving in straight cars, by months varied during the year 1932 from a high of $2,910.80 to as low as $1,006.73. Your

high month was October; your low month was March; August was your next highest month of $2,400.

A. When was that, 1932?

Q. Yes, and for the entire year, you had 26,790 cattle of that kind arriving that way with 5,349 drafts, which would be just about 5 head per draft. In other words, if you had a car with 20 head in it, it would require four drafts to sell it.

A. We get a great deal of this mixed truck stuff.

Q. This is only carload stuff.

A. Carload stuff?

Q. In single ownership.

A. Yes, we get a lot of steers that come mixed and require a great deal of sorting and grading.

Q. Now, in the case of plural ownerships in straight cars, you had 3,249 head from 336 owners with 1,135 drafts. That would be about 3 head to the draft. That is, you understand, straight cars, plural ownerships?

A. Yes.

Q. You had 124 cars of that kind of business, as it is set down here, for 3,249 head, an average of 25 head of cattle to the car, and, in order to sell a carload of that kind of stuff, you had to make 8 sales. Let me ask you, do you sell cattle of plural ownership or livestock belonging to two owners in the same sale or do you sell it on its own merit?

[fol. 1387] A. As a general rule, sell it on its own merits; once in a while, if there happens to be just two the same or three about the same, you might sell them together.

Q. Would you consider that a usual or an unusual occurrence?

A. Well, it is more unusual than anything else. As a rule we sell each man's separate, as the owner demands it, unless that would be an odd head or something like that.

We sell each owner's on its own merits and it necessitates a great many sales, and, as rule, that stuff is uneven in grading and we have to grade it. In the case of cattle and calves only, my brother C. F. Gentleman would sell the calves, and in the case of a car containing cows and steers and calves, he would sell the cows and calves and I would sell the steers. And if the car contained fat heifers, all three of us would sell them. We do have such loads.

Q. In the case of No. 1 Mixed carloads that contain cattle and calves only, where each car will have some calves and some cattle but no other kinds of livestock, during the entire year, you had 246 carloads with 7082 head of cattle from 103 owners with 2,274 drafts, a little over three head to the draft. In the case of calves that were contained in those cars, you had 1167, same number of owners, with 416 drafts, less than 3 head to the draft. In plural ownerships, cattle and calves only, you had 91 carloads, 2231 head of cattle, 423 owners with 1166 drafts a little less than 2 head per draft. You had 641 head of calves from 253 owners with 348 drafts, less than 2 head per draft. Now, in the case of a mixed car, No. 2, containing all mixtures, including cattle and calves, it may be necessary to use all your salesmen in order to sell the contents of one carload?

[fol. 1388] A. Yes, sir.

Q. And, if the car contained sheep, you would have to turn them over to the person who sells your sheep?

A. Yes, sir.

Q. In the case of single ownership, Mixed No. 2, that is all kinds, you had 278 cattle arriving in 25 single decks, 5 double decks, of course, no cattle arrive in double decks.

A. No.

Q. There were 278 head of cattle from 10 owners with 77 drafts; that is less than 4 head per draft. In 49 calves with 17 drafts, a little over 3 head per draft; you had 1176 hogs with 68 drafts, a little less than 20 head, and you had 172 head of sheep in 12 drafts, about 15 head per draft. In the case of plural ownerships, all mixtures, you had 1118 head of cattle in 747 drafts, considerably less than 2 head per draft. You had 1049 head of calves in those cars with 574 drafts, less than 2 per draft. The hogs in those cars were 7602 head with 1796 drafts, less than 4 head per draft. In the case of single ownership compared with plural ownership in hogs, where you had less than 20 in the single ownership, you had less than 4 in the plural ownership. In the case of your drive-ins, the work papers show you had an average commission income of 89 cents a head on all cattle that arrived by truck. There were 9052 head in 2191 owners, sold in 4350 drafts, a little over 2 head per draft. In the case of calves, you had driven-in 1,662 head with 1156 drafts, less than 2 per draft. In the case of hogs, you had 32,739 head from 2,438 owners with 4,589 drafts, about

7 head to the draft. The work papers show that there was an average income of 29.4 cents per head commission average collected on that business.

Are they the mixtures that you have described as occurring now that did not occur to the same extent in 1923?

A. Yes, sir.

That illustrates the necessity for having as many cattle salesmen as we do to handle the business we receive. Look-
[fol. 1389] ing at it from a service standpoint, that is the way we look at it, we have got to have the salesmen in order to give the service. There is none of it weighed separate or graded separate unless we have to. We make as little work out of it as we possibly can in order to handle it efficiently. You see, a great deal of our business is local business and that is what brings in a lot of this odd stuff, you know, and we are not like those Western fellows, they have bigger bunches.

The western fellows do not have their business come in as many odd lots as we get ours in, except in the case of estrays.

Q. Do you find that your receipts by rail are decreasing and your truck arrivals are increasing?

A. That is the way it appears to me, considerably.

Q. During the year 1931 you had 87,994 head of livestock in straight cars, cattle and calves, and hogs and sheep. During 1932 you had 67,581, or a loss of 20,000 head. In the case of No. 1 mixed, cattle and calves, you had 6,559 head, and in 1932 you had 11,121, nearly twice as many in 1932 as in 1931. In mixed cars No. 2, all mixtures, you had 19,537 head, while in 1932 you had 11,815 head, almost half as many. Your truck-ins in 1931 were 38,269 head and in 1932 you had 47,386 head. In seconds you had 28,887 in 1931, and in 1932, 8069 head, or a loss of 20,000 head. The type of business that is easier to handle from a salesmanship standpoint decreased and the type of business that causes a salesman greater difficulty increased?

A. Yes, sir.

[fol. 1390] Q. I will ask you to look at the detail of income and expenses, profit and loss, for the two years, and indicate what items you believe to have been ill-advised, unnecessary, or extravagant, in your opinion?

(Witness examines exhibit.)

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A. Well, I don't see any on there, only that insurance and business, I never could see that. We have to carry that mortgage and theft insurance, and we have to carry the compensation, at least we have carried it. That is the only things I can see on there I would like to get rid of.

Mr. A. M. Gentleman sells more of the hogs received by the firm than Mr. Mallory does.

As to what class of salesmen are regarded as being the highest class salesmen on the yards, cattle, hogs and sheep, they all think they are the highest class. I would not say that it was true that steer salesmen are generally recognized as the highest class salesmen on the yards. I don't believe that is true. As to whether an efficient hog salesman is entitled to as much salary as an efficient steer salesman, it all depends on how much he has to do. In the case of our partnership, we all divide the business equally.

The way I find it there are a great many times I have to put in a great deal more work on a carload lot than I would on some drafts, but generally where you have a great many drafts, that means a great deal more work and a great deal more selling, of course. I would favor a head [fol. 1391] rate rather than a carlot or a draft. I told on direct examination in substance that I had a loss of business. That our receipts had fallen off. I cannot answer whether they have fallen off any more than the total shipments to the stockyards.

Any one of our salesmen will buy cattle on order. As a rule we aim to let the salesman buy the kind of cattle they are selling.

J. L. Farren who sells our sheep is not a regular employee of our concern. He is the man to whom we turn our sheep over for sale if we have any.

Recross-examination:

Q. Now, assume that you are still taking the head rate, that 20 fat steers came in in one carload, then let us assume that in another carlot there would be let us call it 15 fat steers and 5 calves. Would you feel that there should be a different rate there in the total amount.

A. If the 15 fat steers were in a car and 5 calves, you mean should we charge a straight carload rate, is that what you mean?

Q. No, based on the head rate. Would you feel that you should charge more for steers or for 15 steers and 5 calves than you would just the 20 steers?

A. No, I wouldn't say so, no.

Q. But you have no idea in mind at the present time of what percentages might apply?

A. No, I never thought of that.

Q. Based on the head rate?

[fol. 1392] A. I always felt that our commissions were in line with the way they are now, and I just let it go at that and I never gave it any thought.

My father does no selling now.

Mr. Ralph E. Gillogly, a witness called by the Respondents, testified as follows:

I live at 2226 East 70th Place, Chicago. I am in the commission business and a hog salesman for Gillogly and Company. Am one of the partners in the firm. For the last twenty years I have been selling hogs principally for the same firm. I handle all classes of hogs.

Our consignments come chiefly from Iowa, Illinois, Wisconsin, Minnesota, Dakota, Indiana, and a few from Missouri and occasionally some from Ohio. I have a man with me that has a membership in the Exchange and can sell hogs, and I have generally two other yardmen, including the man that has a membership. At times he assists in selling hogs.

Hogs are coming in smaller lots, different ownerships; each of them have perhaps a few good hogs, and probably a few packing hogs and a few governments or something like that. It is our practice to sell each man's hogs on its own merits. It is necessary to sell each grade separately. That means that in a day's work I have an awful lot of work to do in selling the different lots and different shipments; it takes, requires a lot of sorting and a lot of buyers and a lot of extra work. We have to sort these hogs [fol. 1393] for ownership in many cases. And after having sorted them for ownership, we must sort them again for grades.

I am one of the partners of Gillogly and Company and I participate in the management of that firm.

The firm is making no wasteful or extravagant expenditures in its office operations. We are making no wasteful or extravagant expenditures in office supplies.

We are making no wasteful or extravagant expenditures for yard services. We are making no wasteful or extravagant expenditures for selling services. I don't think we are making any wasteful or excessive expenditures for getting new business, or wasteful or extensive trips to the country. I doubt if we did not make reasonable expenditure for advertising purposes, whether we could keep our business at its present volume. I have not been in the country on a soliciting trip for five or six years. Other members of the firm go to the country. They go out and sometimes to solicit new business, often times to go out to appraise livestock on request from the country. We try to comply with the requests we get to come to the country to see livestock but we are not always able to go. We do not often send representatives through the country seeking new business, but we do occasionally send out a man [fol. 1394] in a new territory where we have never been acquainted. That is not usual or often. Our firm does not engage in any race with anyone to take business away from any other Chicago market agency to my knowledge. I have not observed any such race.

I do not know how many hogs I can sell next Monday. I can tell by looking at a load of hogs about what price I would expect to get for them on the market. I cannot say that I can go into a load of hogs, take a careful look at them and then determine how long it will take me to sell them. It would depend on the market. Most of the time but not every day we sell all the hogs we receive that day. Sometimes we hold them over because we cannot get a bid on them. I held hogs over this week. I had one heavy load of butcher hogs Monday and never had a bid on them. I sold them on Tuesday.

Cross-examination:

We have practically the same organization now that we had in 1932. I think we have hired another man in the office since 1932, recently. I hope it will be a permanent man. He works in the office doing book work. We generally have two yardmen in the alley as permanent employees. One of them has been there about ten years and the other has been

there perhaps five or six. I sell most of the hogs for our firm. Not always all of them. In 1932 I would [fol. 1395] not know what percentage I sold, but the largest part of them are sold by me, a very small percentage sold by anybody else. I would think I would sell around 90 per cent.

I have charge of the hog department, practically anything pertaining to the hog department, and I help and oversee a lot of the office work. Occasionally on real busy days I do some of the office work myself. Some of the problems that arise in the office requiring my supervision and attention are seeing that the account sales are made up properly and seeing that the yardmen have the proper tickets for the proper men, writing the letters, taking care of the correspondence, general office work of that kind, everything that pertains to the shipment of hogs. I look over all the account sales before they are sent out. I keep in contact with my shippers just by correspondence. We send a circular practically every week. They all get circulars, all our regular customers, each week, and occasionally I write a letter besides that, and of course, on every shipment I write whenever they have a shipment.

The reason it is harder to make each sale now than it was five years ago; well, the demand is narrower, for one reason, and the buyers have been very bearish in the last year or so, and it takes more work to get an agreement out of them what the price should be on the lot of hogs, to get [fol. 1396] what you think is the proper value. I think we have to show them to more buyers than we did then. I think that the chief difference in conditions as they exist now and as they existed five years ago is that it is later in the day when we get our sales made. I think that because the packers are not as large buyers on the market at present as they used to be. They used to have larger orders and buy a more varied class of hogs.

Of course, the number we have to sell would also have something to do with it. On present markets you couldn't sell very many more than you can sell, like right at present if you had a larger supply, it would still be harder.

I have never figured out what percentage of our commissions I think we could afford to expend in advertising and other business-getting efforts. I don't know just what percent, but it would be a small percentage. I have no definite

figure in mind. I know that our customers consign their livestock at times to other firms on this market. I have been told that they have been out to see our customers, even other firms have told me that they have called on customers of ours.

[fol. 1397] I could not answer how much business direct buying has taken away from our firm. It would be a fairly reasonable amount. In some localities we do not get hogs at all where we used to get a good many. Not very much of it has been replaced by new business which we have been able to acquire We try to get new business at all times.

Q. * * * I would like to ask you whether, in your practice as a salesman, you hold your hogs until you think all the hog buyers in the yards have come through your alleys and looked at the hogs, if they are interested, or just how does that thing work out?

A. Well, it depends altogether on the class of hogs they are buying. If I know a man wants a certain grade of hogs, I will take him in and show them to him and if he bids me what I think they are worth, I will sell them to him. Other days there might be other grades of hogs and I might have to show six or eight different buyers before I get what I determined the market price for them, so that the different days vary together with the different grades of hogs you have.

Armour, Swift and Wilson, I think each have a buyer in each division, while the other packers do not all have one buyer in each division. As to how fast buyers move along, depends altogether on their orders I think; if they have an order to get a fairly large number of hogs, they move rapidly. If they have a bearish market, they do not. I consum-[fol. 1398] mate sales as fast as I can. Oftentimes we will find buyers that have short orders and they are all working at the same time and you have to work fast at that time, or again it might be that they are dragging out all day long, and if there is a broad demand, they might take the hogs two or three hours after they bid on them if they have a big order, if there is a broad demand.

Most days I eventually sell out before the day is over.

MR. A. M. GENTLEMAN, a witness, called by the Respondents, testified as follows:

Direct examination:

I came to the stockyards when I was 17 years old. I worked two years in the sheep house and then I came over into the hog house and I have been in the hog house for thirty years. I have been selling hogs for about 25 years, have had full charge of the hog department for 25 years. I am one of the partners of William Gentleman and Sons. It is necessary to make a greater number of sales in handling the carload business which reaches us than it did five or ten years ago; the trade now demands the stuff to be graded, and, therefore, you have to sort very closely. It [fol. 1399] is not possible to sell otherwise than to sort closely as the business has been converted from rail to truck, and I find that there are a great many more small shipments per owner sold than when the business formerly came by rail. It takes a greater length of time and a larger number of sales.

In the last five years, putting it mildly, I would say that the competition, there is practically none whatsoever outside of a few eastern shippers and up until three or four weeks ago there were very few of them.

I think the commission rates for selling hogs should be increased; because there is more work, and a whole lot more work now than it used to be. You take seven or eight or nine years ago, you could sell a whole train of hogs with less trouble than you can now sell eight or ten truckloads, with more help to take care of them, these little bunches come in trucks and you have to establish their identity all the way through and that takes time and it takes a lot of help to do it.

The persons who are employed in the sale of hogs for William Gentleman and Sons are fully occupied during the market hours of the day. Outside of Saturdays, it is true [fol. 1400] of most market days of the year. Saturday is practically no market at all, practically no stuff comes in, but we hold ourselves in readiness to sell what we do receive, and of course, there is always plenty of business in the office to take care of on Saturday, getting the books balanced and stuff like that.

I devote a part of my time to rendering advice and counsel to the other members of the firm with reference to policies; we consult one another. We mutually agree as to the amount of solicitation which should be done. From time to time we take up solicitation as it comes in.

We solicit our hog business nearly all by personal contact. Some letter writing, nearly all by personal contact. It costs a whole lot more to get business now than it used to. That is because of direct buying. The direct buying is difficult to solicit against, but it is necessary to do it in order to maintain our business. The prices we help to make as salesmen are prices which are used as a basis for the purchases made in the country.

Cross-examination:

My father is directly responsible for the management of our firm. He directs all the inside operations. The outside is taken care of by the individual partners. I have charge of the hog department. I sell practically 85 per cent of the hogs and have charge of the letter writing. I write [fol. 1401] letters just to custmers who ship hogs to our firm. Mr. Mallory writes some of the hog letters and the other boys take care of the cattle end of it.

I am familiar with the duties performed by my father in inside work. He takes care of all the financial end of it. That involves taking care of drafts and such stuff as that. He does not make up account sales. We have made it a plan never to pay any draft until the stuff is here to meet it, and when a draft comes in, we are pretty sure that the stuff is going to meet it before we pay it. Quite a few of our customers draw drafts in advance of the sale. We never pay them until the stuff is here to meet them and know that they are going to meet it. Of course, if we figure they are $25 or $50 short and it is a good customer, we pay it, but not otherwise. We got burned once and we don't want to get burned again. We draw back on them for the overdraft. He signs nearly all the checks when he is there. He spends all of his time in the office. He is in the yards from six in the morning until five at night. He comes down at six in the morning, he is in front of the building every morning at that time.

Where we have two or three cars of hogs that we cannot sell, we just work them until we can sell them, and we

usually sell them on the same day we receive them, if we can. That situation would arise because the hogs were of [fol. 1402] some peculiar class or grade for which there was little demand. It happens frequently. We eventually dispose of them by working on them until we can effect a sale. It sometimes happens when that situation arises that we have to take a less price than expected. I find that there is a demand or outlet for practically all hogs that we receive at some price.

On soliciting trips we go out and get in personal touch with the people in the country. Sometimes we go on request and sometimes on our own initiative. That is a matter of calling on the individual and asking him to ship his hogs to us; but when they request us to come out sometimes it is to pass judgment on their stuff and get our advice on it. As to how we select a territory into which we will go on these soliciting trips; the shipper might come in and say that there are quite a few cattle in his immediate vicinity and it might be a good plan for us to go out, and we go out. We solicit cattle as well as hogs only in Montana. Otherwise I confine my soliciting to hogs. Sometimes it is pretty hard to go about soliciting livestock away from direct buying sources. We try to tell them the advantages of the Chicago market over the direct concentration points. That is all. You don't know which ones sell direct until you run into them. We do not make [fol. 1403] special trips out for that purpose; just when we are on the trips that is all. I do not keep informed each day as to what the packers pay for their hogs in the country. The only way I have of getting that information is when a shipper ships a load and tells me what he was bid in the country on them. I do not know the number of hogs the packers in Chicago buy direct each day.

Redirect examination:

I was last on a soliciting trip six months ago. I am going away tonight, to Montana. I am going to interview the ranchers. Am going to make my headquarters at Livingston, Montana, and work out from there. There is going to be a big movement from there in the next two weeks. I desire to go there to get as much of that business as possible. I expect to be gone two weeks, and maybe three. I

have had requests to come and see cattle in that country, and my first business will be to call on those shippers who have requested me to come to Montana; and I also expect to see others than those people in order to obtain their business as well.

Recross-examination:

I am going to solicit sheep and cattle. That is all that comes from there. I will see all of our previous customers and try to get all the new ones I can. I cannot say that most of my time will be spent in soliciting new customers. I don't know. I will see as many of the old ones as I can and as many of the new ones.

[fol. 1404] I have kept no account to determine what results I have obtained by way of drawing shipments to us which formerly went direct. We have gotten some of it, surely. I would not say how much though. I do not know how much business we have lost through direct buying. The business of our firm has decreased in the past five years, our hog business, some. I would say that the big end of the hogs went to direct buying, some of it might have come through other firms at the Chicago market, but the big end went to direct buying, I would say.

I stated that I felt that I am as efficient as I ever was, and I feel that way even though our receipts have fallen off. When you can control your business, I think a man is efficient. The only business that has gotten away from us is direct buying, I would say. I think the ability to control business determines our efficiency.

It is my opinion that we work harder to sell a given lot of livestock now, than we did five years ago. Five or six years ago a man would ship you a load of hogs and you could sell it mixed. You just had one sale. Now that one particular load of hogs, you have to cut up all the way from five to ten different lots. You get a truck load of hogs of ten or fifteen hogs and sometimes you have to make five or six lots out of them. It is no more difficult to establish prices on the Chicago market than it was then.

[fol. 1405] Redirect examination:

There has never been a time in my experience in the commission business that presented a greater problem or

constituted a greater hazard than the present moment. There has never been a time when it was as difficult to make a living in this business as at the present time.

Redirect examination:

Q. One other question, Mr. Gentleman, you understand that the Government is at the present moment considering the question of marketing hogs, corn hogs and do you understand in the connection that there is a proposal pending to the effect that the production in hogs will be reduced by the marketing of piggy sows?

A. I have read something about it.

Q. If that goes into effect, that would present a hazard by reason of the determination to reduce the volume of hogs marketed which would affect them very adversely?

A. Certainly.

Mr. Francis Melvin Hatch, a witness called by the Respondents, testified as follows:

Direct examination:

I live at the South Shore Country Club. I am in the livestock commission business. The name of our company is the Northwestern Live Stock Commission Company, organized under the laws of the State of Illinois. It has been in existence over forty years. I am one of the principal stockholders. The other stockholders are T. P. Ford, [fol. 1406] D. M. Woods, J. B. Hatch Jr. I sell all kinds of cattle. J. B. Hatch Jr. sells all kinds of cattle. Mr. Ford sells cattle and buys on orders. Mr. Woods sells hogs. Mr. Joseph Hanley was with us in 1932 but is not with us now. T. J. Connors was a bookkeeper. He left on the 15th of April, 1932. We employed some one to take his place. R. E. Johnson works in the hog department, yards hogs and sells hogs. Humbert yards cattle and hogs, yards everything. We employed him some time in the month of April last year. F. Fox worked for us last year for three months selling cattle. Ambrose O'Malley sells butcher stuff. He also sells with me now. He started in December of last year. A. P. Schmal works in the cattle department. He handles his own trade through us. Mr. Hanley received

a straight salary. Mr. Johnson receives a small salary plus commission. He works on a commission basis of fifty-fifty. Mr. Fox is on a salary and commissions. He gets fifty-fifty of commissions. And Mr. O'Malley the same; Mr. Schmall has been mostly on a straight fifty-fifty basis with no salary. At times he has had a small salary, but at the present time he is on fifty-fifty. I make our own arrangements from time to time with him. We try to make the owners' salaries according to our business. The salaries for 1932 were established at the first of the year. We made a change in them during 1932. I think that was in March, 1932. We have made reductions during 1933. [fol. 1407] There were some little advances, not much. Mr. Wood had an advance. That is all. Mr. Humbert had an advance. He started in as a young man, you know, a year ago last April. He has become sufficiently proficient to cause me to raise his salary.

The arrangements made by us with reference to paying for any soliciting done on business where these persons working on a commission make soliciting trips, we pay the expense according to the commission we get out of it, on a fifty-fifty basis commission. It is fifty-fifty expense, the same way, we each stand our proportion, according to the commission we get out of the gross. I have no idea what proportion of that sum was spent for making trips where requests were made to come to the country rather than for straight soliciting. We seldom get requests to come to the country to appraise cattle.

We had a $75 a month reduction in our office rent during the year of 1932 by giving up part of the space. We don't own any horses at the present time. We have to hire horses occasionally.

I practically do no soliciting myself personally. It is a rare case when I go into the country myself. I sell cattle regularly. And ride a horse while doing so.

[fol. 1408] I was injured in the cattle alley a week ago today. This is the first day I have been out. The horse I was riding was rather mean, got scared at some trucks that were going through the yards and he started to turn around and I started to get him around, I didn't want to give up to him, and I didn't feel that he was going over, but he finally went over. He fell partially on my left side. I have been hurt before at different times. About three

years ago, I had a steer, I was sorting cattle, and a person called me, and they were wild western cattle, and he called my attention and the cattle kept coming on and I didn't know they were coming on and he jumped over me and he cut my head open and knocked me down and when I came to, I was in the Washington Park Hospital. That is a hazard that is apt to happen at any time.

I had another one in Sioux City, Iowa. I was sorting some western cattle, and they were wild, and I didn't know it, and the boys had been trying to sort them on foot, and they got them irritated, and I went into the alley, a little pen about twenty feet square, and I noticed that one of these animals was very mad and I wheeled my horse and tried to get out, and he caught the horse between his hind legs, gored him, and killed the horse, but I was so close to the fence that I could jump over. I jumped on the other side of the fence. We had a good many of these hazards in our business. We do not carry any accident insurance [fol. 1409] and charge it to the natural expenses of the business. I know that the rate is higher in the case of salesmen than in the case of other callings. It is considered a greater hazard, and it seems to be getting more so every year.

We clear Compton, St. John and Dunbar Company. The others are individuals. That is the only firm we really clear. We have suffered losses in the business due to the defalcation on the part of employees. We discovered that April 15th, 1932. The bookkeeper had been taking money out of the cash drawer. It ran into a considerable sum. He was not bonded. The amount of the loss was set up on the books last year. Perhaps just what he took last year maybe was set up; he was taking it over a period of about four years, and I am not sure how they handled that, but they knew what he took, we knew what he took in 1932.

All of our salesmen work together, the yardmen bring them from the chutes and put them in the alley. Usually the steer man and the butcher man sort them if they are mixed cattle. T. P. Ford, J. B. Hatch and I sell steers. Mr. Ambrose sells butcher cattle and bulls and calves. The steer men work on them together. When we sort a mixed drove of cattle, the butcher stuff goes to the butcher alley and the steers are sent to the steer alley.

[fol. 1410] We have done a good deal of loaning money to shippers and feeders during the last twenty years. I take care of that for the company. We rediscount most of that paper. The bank charges 6 per cent and it depends on the locality at which we take the paper; in Illinois from 6 to 7 per cent; Dakota and Iowa 7 to 8 per cent; and Nebraska uaually 8 per cent. The expenses of handling the loan is as much as the difference in the rate at which we take the paper and what we sell it at. There is no profit, from the standpoint of loaning money alone in those transactions. We have suffered losses. They have been quite heavy in South Dakota since the drought that we have had up there in the last four or five years. We have charged most of them off.

I believe the loaning of money to patrons when that money is used in feeding, developing livestock for market, that that is properly a part of the livestock commission business and should be so regarded. We make those loans in order to get the business to sell on commission. It is not possible for most of these shippers to get loans for that amount of money. We were financing or assisting in financing the people that we thought were responsible who would ultimately ship livestock to the Chicago market and to us. I think the loaning of money on this business is profit-[fol. 1411] able from the standpoint of commission men. I think that is true over a period of years. We do not get it from the rate of interest but from the commission business.

If a person has a lot of money of their own, he can make some very good loans in the livestock business, get good rates. In that way, you can use your own money to good advantage and, at the same time, originate business for your company. It is necessary however to exercise great care in the loaning of money in the livestock business; and we are especially fitted for it through the long years of experience we have had with the various people feeding and raising livestock, we know their ability in that respect. The reason we lost money in 1932 was account of the defalcation of Mr. Connors. Business was not very good with us otherwise. South Dakota at that time, which is a very strong territory with the Northwestern Commission Company had practically no business. That is one of the conditions that is apt to confront a commission firm at any time. I attribute the loss of that business to the drought that

existed in the territory from which we received a large part of our business in Dakota and also Nebraska. The situation in that territory this year is that there has been practically no business from Nebraska this year. South Dakota has had a better business than last year as they raised more grain in 1932 than they did in 1931. The next year [fol. 1412] we will get practically no business from Dakota as they are raising nothing up there in the way of grain. The drought took the small grain early. Then they got rains for the corn at the proper time, but the grasshoppers have taken the corn.

I think that a rate should provide a commission firm with a sufficient profit to be able to withstand the losses that would result from a condition that I have described. The commission rates now being charged are not ample for that purpose. The number of sales that are necessary to be made to dispose of livestock and the number of drafts necessary have been increasing very much, have for the last twenty years. It has been increasing very much the last ten years. Shipments are getting lighter all the time, a farmer would not have enough stuff to make a load, 15 or 20 farmers would go in together and ship a load, naturally you would have many more sales under those conditions. We try to get all classes of business, carload or truck. We don't specialize in anything. We work on all kinds of livestock when we solicit. The hog business has decreased from 1931 to 1932 on account of direct buying. I think that the main portion went to concentration points; some have been consigned to other commission firms at Chicago. Mixed cars usually have to be graded more than straight cars. I have sold cattle for twenty-nine years.

[fol. 1413] Q. Based upon that experience, do you believe that a carload basis is a proper basis for the determination of the amount of work necessary in the sale of cattle, or do you believe that the number of drafts as shown on these sheets before you represent more accurately the units of work necessary to dispose of the live stock which you receive on commission?

A. Read that question.

(Whereupon that question was read.)

Q. Do you understand the question?

A. Yes, but I don't know really how to answer it.

Q. Well, do you find that livestock varies as to the number of drafts and the number of sales necessary to dispose of a carload?

A. Very much so, yes sir.

Q. You have cases where you will have to sell each animal separately in a load?

A. Yes, sir.

Q. You have cases where you have 23 or four head to the draft?

A. Yes, sir.

Q. And you have some cases where you sell a carload straight?

A. Yes, sir.

Q. In one draft. Now, as there is a wide variation in the number of sales which it is necessary to make, is it possible to determine the number of sales until you see the cattle and have them on the market and are actually selling them?

A. No, sir.

Q. The work papers reflect the number of drafts into which the business had to be broken. An example of it is before you——

A. Yes.

Q. —indicating the drafts into which you had to break the animals to sell them. Now, what I want to know is, is it a proper basis to assume that a carload of livestock repre- [fol. 1414] sents a proper unit of work or is a better basis the number of drafts representing the number of sales?

A. I think it is a better basis to gauge our prices on the number of sales in a car.

Q. Well, now, as to the amount of work necessary, is it a better basis for judging that?

A. It takes very much more work on a mixed load than it does on a straight load.

Q. Well, is there anything accurate about the sales effort necessary to sell a carload as a carload?

A. Anything what?

Q. Is it an accurate basis to take a carload of cattle and to consider the work done in connection with it on a carload basis?

A. No, sir.

Q. What is the proper basis for the consideration of that question in your judgment?

A. As I said before I think it should be judged on the number of sales that we have to make in the load.

I employ the help. I decide what we will pay them. I decide on the amount of time that he should go to the country to solicit business. I make the decisions with reference to financing otherwise. I have been trying to hold down the money spent for solicitation as much as possible during the last two years.

We have had to hold down all expenses, as you can see, from examination of the blue audit, by our salaries, and we have tried to keep other expenses in line; for the amount [fol. 1415] of business we are receiving we could not afford to take a chance to go out and spend a lot of money, it being hard to get the business especially on account of direct buying. That applies more to hogs than to cattle, but they are buying a good many cattle direct as well.

Our total expenses as shown on the blue audit for 1932 was $30,005.56, and our total expenses for the year 1931 was $46,000, so that we have reduced our expenses $16,000. That is part of the responsibility of the management. We got our expenses down about as low as we could get them in 1932. There has been practically no change since that time, I believe. We are making a little money, but not much. We have not reduced salaries in 1933.

Cross-examination:

We reduced our expenses $16,000 in salaries and other expenses. Soliciting and advertising was reduced.

I own about 90 per cent of the stock; the remaining stockholders are all relatives. J. B. Hatch, Jr. is a nephew. He owns 40 shares, and there are 500 shares outstanding. D. M. Woods owns 10 shares; T. P. Ford owns ten shares.

[fol. 1416] The defalcation of the bookkeeper extended over a period of about four years. We have had an auditor to check our books every year; and checked three times in the last year and half the bookkeeper was there. The auditor did not really discover the shortage. But at his suggestion we checked into the freight account and found the bookkeeper taking $100 at a time. We had no bond on the bookkeeper but the treasurer was bonded, and he was supposed to watch things. The treasurer signed all the

checks, with the exception of those that I signed. I never tried to get a bond on the bookkeeper. When he first came there he handled no cash at all, but, of course, later on we got to letting him use the cash there and let him give out money to the shippers and it led up to that. We carried our own insurance on him over a period of years but I have not found that it was to our financial advantage.

I was brought up in South Dakota from the time I was fourteen years of age. I handled western cattle for years. I met with accidents on the range, but they were altogether different.

I answered on direct examination that I thought the draft showed more accurately the amount of work done than the carlot when it came to fixing rates. It is now based somewhat on drafts. We get more of a rate when there are more drafts. It would be pretty hard for me to [fol. 1417] figure what commission rates in my opinion, would be necessary in order to insure us against loss caused by drought. I have said that I thought the rate should be higher, so that it would in a sense insure us against such losses. Off hand I cannot figure such a rate and could not tell you what the rate should be. It is my thought that with an increased rate it would practically insure us a continuation of our business and insure us a livelihood in the commission business.

R. H. Greene, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 9851 South Winchester Avenue. I am head cattle salesman for Rice Brothers.

When I was eight years old, I was on a farm in Rice County, Kansas and we fed a good many cattle and milked some cows. I was there four and a half years and went east to college and came back to Fort Dodge, Iowa, where we had moved, where we fed a good many cattle and milked a good many cows, in fact, supplied the town of Fort Dodge with most of the milk and carried on general farming operations there, my older brother being the head of the operations, but I spent a good deal of the time on the farm while I was teaching in the high school there. I then came to

Chicago and for about ten years bought cattle for Swift and Company and for the last twenty-five years have been em-
[fol. 1418] ployed in Rice Brothers in charge of the cattle selling.

We have a man who sells bulls and calves. Another man sells the cows; another man sells the yearlings and Mr. Rice sells the stockers and feeders and I sell the fat cattle, with the general supervision of the entire operations. I sell the fat steers myself. Rice Brothers handle all kinds of cattle. Our receipts come from Texas, Oklahoma, Kansas, Nebraska, the Dakotas, Montana, Wisconsin, Iowa, Missouri, Illinois, Indiana, Ohio, Michigan and Montana with a few Colorados and Wyomings. The receipts that come from these various states show a very great diversity in quality and grade and class; a very common quality to the very best. Today it requires cattle to be graded very carefully in order to get the maximum amount in their disposal. There is nothing that is more important on this market than the careful sorting and grading of cattle. There is a great difference in the amount of gross money to the customer to be obtained by careful grading. I am confident the amount of sorting done today has multiplied twice and I think three times, more than several years ago.

When I came to the yards, a drove of cattle would come in and they would sell them all together, cows and heifers and bulls would frequently all be sold together. In the afternoon, the buyer would go out and sort them or in some packing houses they would be graded and sorted at the
[fol. 1419] packing houses. Today they have individual buyers for each class of stock and we have so many order buyers here that you can select from your cattle certain cattle that will suit certain men and you get an increased price through having something that will just suit the buyer. After all, cattle are sold for what they look to be worth to the man who purchases them, and it is the intent of the person sorting them to make them look as attractive as possible to the purchaser. You put a diamond on a piece of black cloth to make it more brilliant and on a piece of what paper to show its color, and similarly we try to make these cattle more attractive in bunching them together in a tight pen if they show a little grossness in the belly, we cover that up, if possible, or, if they will stand careful examination, we do not mind them being loose in

the pen. The only object we have in view at any time is to increase the net returns to the shippers of the livestock.

The number of hogs for sale on this market is perhaps 40 per cent less and the decrease in receipts not over the last year but over a period of years is 10 to 15 per cent less.

Many of these cattle are coming in trucks. It requires much more yarding expenses, more pen room to handle them, and it is more difficult to sell a few cattle than a load of cattle and inasmuch as they can send a few at a time they are not careful about grading and they will send all sizes and kinds in that same consignment. When we have [fol. 1420] a consignment of cattle belonging to three or four owners, and each owner has three, four or five grades or classes; we take off each owners cattle separately and, if we are short of pen room, we either chalk mark them carefully or I get a very clear conception of just who owns which and sell them that way. Might I add there that the packers are very diffident about buying so-called odd cattle. They say that they are mixed in there and complain about wanting to buy these odd cattle. We have more odd cattle to sell now than we had a few years ago; many more.

We receive some business from the extreme Southwest. Oklahoma and Kansas. They come from both large and small operators. We have among our customers some of the large operators of Kansas and Oklahoma.

They frequently ask us to visit their feedlots, but I try to be here the first four days of the week at all times, and can spend Friday, Saturday and Sunday in that territory and either drive home or take the train. I think I acquiese in requests to see those strings of cattle in Kansas and Oklahoma five per cent of the time. If I were in consultation with an owner that had a train load of cattle; if they were of several kinds and I thought the market favorable, conditions favorable, I would advise him to ship the entire [fol. 1421] consignment for one market, but if they were all one kind I think five to ten loads depending upon the demand would be wise.

We first take off the females and the calves and the bulls when handling cooperative shipments. Then we yard them according to the marks or descriptions as given us in the advice accompanying the shipment, and sell and weigh those separately except in the case of calves, when the manager asks us to weigh them in bulk, as of course, there is a dis-

advantage in breaking the scales, it takes ten pounds to break the scales.

In the handling of a load of cooperative cattle, it sometimes occurs that the entire sales force of Rice Brothers is in working on some portion of that consignment. They would be calves and bulls and cows and heifers and stockers and the fleshy cattle. And the entire sales force would have a greater or less duty to perform in the sale of that consignment.

We were the originators of the system which is universally used through the yards. In fact, I, myself, organized the first cooperative society that was organized in Illinois, I believe, at Rockford, with Mr. Cleveland as manager. The tickets, after the sale, of which I have spoken, would be brought to the office and with the marks on the ticket, then the name of the owner is inserted, with the weight and the [fol. 1422] price and the gross and the marks of the several owners in this consignment. That I shall refer to as the master sheet. Then, on each of these sales, a small account of sale is rendered for each owner which accompanies the master sheet. In some cases, the entire proceeds are sent to the manager. In some, it is requested that a check be sent to each owner and should be remitted in currency or some other method. That master sheet is then totaled and any home expenses which are directed are deducted and the yardage and the feed deducted, and, of course, the commission and the total of the master sheet then must balance with the total of the small account sales sheets.

One buyer formerly bought many different kinds of cattle. Today the packers have adopted a scheme of certain buyers buying the house cattle, others the yearlings, still others the heifers, and another the cows, another the bulls and another man the calves. So that it requires so much more time for a salesman to get all these different buyers to carry on these different operations.

Each bunch of cattle in Swift and Company's office is killed separately. The percentage of beef, the hide and the tallow is figured and the so-called dressed cost, but that does not tell all the story, because the grade of the beef [fol. 1423] which they produce is taken into account and while that dead cost might show one drove of cattle to be cheaper than another, when the beef was sold a better quality of beef might have been produced by the lower cost

animals. A bunch of cattle at the present time, costing six cents a pound, which dressed 60, for the sake of argument, say that cost ten cents dressed, and another bunch of cattle that cost six and one-half cents alive might dress 64 and would cost approximately $10.20 dressed but they might be worth $1.00 a hundred more in the beef, so to the skill of that buyer in selecting the high dressing cattle as well as high selling cattle is the credit due.

Of course the buyers attempt to buy them as low as they think they can; that certainly builds up a considerable sales resistance on the part of the salesmen by the buyers. The buyers proceed now much more cautiously in making their examination and their bids on various lots of cattle than formerly. And as for the salesmen, it takes confidence in your own ability, knowledge of the goods which you are selling, a careful analysis of the attitude of the buyer, and much skill in reading human nature and still more skill in so handling that buyer that he may be willing to part with what he has in exchange for what you have.

[fol. 1424] As to whether that means an additional cost to the firm of Rice Brothers to meet that class of operations, it is difficult for me to answer it. The packers employing the most skillful buyers that money will buy makes it necessary for a commission man who wants to keep his service at a peak of efficiency to employ the very best talent obtainable himself, to cope with that situation.

The buyer would naturally take advantage of any lack of knowledge that that salesman might have and any lack of skill that he might possess in disposing of these shipments.

Five cents a hundred is approximately $12.00 a car, and there is more than that much difference between mediocre and first class salesmanship.

About one half of my time is taken up in business getting activities for Rice Brothers. The methods used are personal correspondence, in calling upon people in the country, and bringing in the influence of my customers to bear upon prospective customers. I feel it necessary for Rice Brothers to keep in constant contact with our customers because the customer feels that way. They expect and demand it.

In order to say as to my hardest competitor in getting new business, I would have to classify that by different territories. In the west the direct buying of cattle for the [fol. 1425] coast and Fort Worth at the present time; in

A. Well, the idea is that they are over there to make money if they can.

[fol. 1453] Q. Now, did you give considerable weight to the amount of profit that a firm made?

A. No, I don't know anything about the profits.

Q. Now, you have also told us that you considered the years that a man had spent in the livestock industry.

A. Naturally.

Q. If a man had spent fifty years in the industry and another man had spent but 20 years, what would be the difference in their salaries, assuming all other conditions to be equal?

A. They could not be equal.

Q. Beg pardon?

A. There is no such thing as being equal.

Q. Well, I have asked you to assume that all other conditions are equal in your mind, that you and your committee have reached an agreement without considering the time spent in the business and agree at the salary for each man and agree the salary should be the same, but then you learned that one man had spent 50 years in the business and the other but twenty. To what extent would that influence it?

A. It would not be at all, one man had twenty years any more than the man had fifty.

Q. So then, the amount of time that a man spends in his business is not material, in your judgment?

A. Not material, no.

I am acquainted with Mr. Kuenster. He does his business through another commission firm, another outfit, not a commission firm, but a firm that furnishes money. At [fol. 1454] the present time his operations are cleared by another firm. I do not know how long I have known him; eight or ten years; I have known him for quite a while. His salary must have been appraised if it is in there. The fact that Mr. Kuenster's business is now cleared instead of being operated in full under its own name would not influence me in any way at all because he is not doing this through any fault of his own. He had plenty of money in his business but the bank failing kind of tied him up. So that the mere fact that there was no moral opprobrium involved meant nothing in our calculations.

Q. We have before us in the blue audits for the firm a showing of two members who perform all the operat-ons of the firm. That is, they do the management.

A. What firm, Kuenster?

A. No, another firm. They manage the affairs of the business, they do the actual yarding, the actual selling and the actual bookkeeping. Now what influence, in your mind, would those factors have in trying to arrive at a fair value of these men's services?

A. Well, I would have to know who I was valuing and know all about it, who they are and know more about it then than I know now.

We appraised Walter Brothers as a very small business. We just appraised it at a minimum appraisal. We took into consideration the small amount of business done, that [fol. 1455] is all we could take into consideration, that is all we practically did for a small deal of that sort. The fact that they did all the work would not make any difference. The fact that we appraised their salaries at less than various yardmen receive in the yards; I don't know anything about the yardmen. Everything would be taken into consideration, the value of the shipper, they had so few shippers that it was pretty hard to put any value on them. We appraised the salary of other owners, a large number of them. I took into consideration the value of a man to the firm he is with, and only to the firm. It is all right for Walter Brothers to figure what they are worth to their shippers. I would not enter into that at all.

I don't know whether we appraised men at more than they were actually earning. We did not know what his salary or drawing account was at any time. The net results were considered which means the profit in a way. We did not have profits of the firms before us. Neither the net nor the gross profit.

I know Mr. Acker. I could not tell you how many years, quite a number. I am acquainted with Mr. Conover. I [fol. 1456] would say they have been in the stockyards 25 or 30 years. I do not have the exact figures in mind at the present time. Based upon the length of service only, the difference there would be in either percentage or dollars in the salary of those two men would be the difference in their business and the way it is handled. I mean the result

of the business where a man handling several thousand carloads, and another man handling a few hundred.

Q. And if the business of one had been consistently diminishing or decreasing over a period of three, or four or five years, and the business of another had remained constant, what difference would there be in the salaries of the owners in that case?

A. I don't think there would be any. If the man was worth the money, he might not be getting it, but he might be worth it, if he is unfortunate enough to have things sliding on him.

I don't place Mr. John A. Waters at the present. I am acquainted with C. F. Freeman. I think I am acquainted with George F. Hogan; I know C. L. Burnett.

We fixed a minimum salary to Walter Brothers because of the small amount of business. Our committee did not agree upon what we would call a minimum salary. I don't know if the term was used. We did not have any minimum [fol. 1457] salary in mind. We did not agree upon a maximum salary. If I thought they were worth 50 thousand dollars, I would say so.

Q. You would put that down, then, if you were aware of the fact that a business was being conducted at a loss, would that, in your judgment have any effect upon the value which you would accredit to the particular owner?

A. Well, it depends on whether the men might be worth 15 thousand dollars or 20 thousand dollars as a salesman for any firm in the yards, but he might not be successful himself. That could be very easily.

Q. Do you have in mind any salesman on the yards or any man on the yards, who, acting as a salesman, only, would be worth 20 thousand dollars?

A. I don't consider it that way. I took into consideration other elements in fixing those amounts.

Q. And you have told us all of the elements that you did consider?

A. It is pretty hard to tell you. Every man over there is different. One man is good one way and another man is good another way, and one man makes his money one way and another makes it another way.

Q. And by that did you mean that in practically every case you really appraised the man himself?

A. That is really what we tried to do.

Q. In what light would you consider a man who testifies that practically all of his time is spent in selling, but that he is consulted with reference to managerial matters?

A. Is he one of the partners?

[fol. 1458] Q. One of the partners.

A. I don't care what he does so long as he is a partner in the business.

Q. Now, if it be true that the 1932 appraisal and the 1931 appraisal are practically in accord, that there are minor differences, would you say, then, that you had considered the present industrial depression with the resultant decreases in earning capacity, or in your opinion should it be considered?

A. No, I don't presume that the idea that a man was dropped off for the time be[illegible]ring the depression would materially affect what he is worth.

Mr. Miles (continuing): Mr. Ryther, if one firm had a large volume of business and was doing business at a loss, and another firm had a small volume of business and doing business at a profit, to which owner would you assign the higher amount of salary?

A. Well, if I understand what this man would be worth if he had to draw a salary, as I say, as I told you a short time ago, there might be a man over there with a business losing money but personally he could go right out and earn a big salary if he wanted to go with somebody else.

Q. What proof would you have in your mind that he could earn a large salary outside?

A. Well, possibly I might have heard that he had been offered it, or something like that.

Q. And you would accept that as sufficient to write up his salary?

A. If I knew it was so.

Q. And if you did not know it was so, you would give no weight to it?

A. No.

[fol. 1459] Q. Now, there is one firm, the Sarsfield Commission Company, the record shows that with two of those men you increased the salary to a considerable extent and the third man was increased very little. Can you tell us

from this Exhibit No. 11, why you took the action that you did take?

A. I cannot remember now.

Q. And there is nothing in this record, Exhibit 11, that would show you the basis for that action?

A. No.

Q. As a banker, would you retain a man in your employ who was not earning the salary that he was drawing?

A. It has been done a great many times.

Q. On what basis?

A. On the number of years he has served faithfully and one thing and another.

Q. Sort of a pension?

A. Well, you could call it that, as long as he was held there on a salary.

Q. The record shows that in one case, the name is Mr. Moberly, the figure that he was earning, that your appraisal increased the amount by $488?

A. $488?

Q. Yes, sir, do you know the basis upon which that was done?

A. I don't remember.

I am acquainted with N. F. Nalley, with J. F. Nash, with Mr. Pritchard; I am acquainted with both W. P. and J. B. Roach.

[fol. 1460] Q. The record shows that in those cases that I have just read to you your appraisal committee figured the worth of their services at an increase sometimes of $3000 per year and sometimes as low as $1700 a year increase. The record shows further that if they were to draw the amount of salary which you have assigned to them as being their value, they would be doing business at a loss?

A. Yes.

Q. Now, with that situation in mind,——

A. Well, Mr. Roach, before he went in business for himself, was drawing a good deal larger salary than we allowed him.

Q. At what?

A. Salesman over there for another firm. We figured in what the man would be worth if he went out and got a job, I suppose, something like that.

Q. Where did you obtain the information that before he went in for himself he was earning more money?

A. Well, like you get any information. He was with the Iowa Live Stock Commission Company, and I don't know what he drew, but I know he was drawing a pretty good salary.

Q. Now, in these cases, to repeat the question, if they drew the amount that your committee has allowed, the firm would be doing business at a loss, but you did not consider that fact, the fact that the firm would be doing business at a loss in fixing these salaries.

A. Either one of them could go out and get the salary we have given them.

[fol. 1461] Q. What proof do you have, or what is the basis for your belief that they can do that, go out and get the salary you have allowed?

A. I know their ability, both of them.

Q. Do you know whether they have been made any offer?

A. I don't know that, no.

Q. Have you ever seen the record of any company showing that they actually had been paid an amount equal to your appraisal salary?

A. Well, I could not swear to it, because I have not seen the books.

Q. Now sir, would you take, please, the firm that I will now hand you, read the information which you had available or which is shown on this record, and then tell me just how you arirved at this man's salary, the mental process?

A. This Roach?

Q. No, this is another case now.

A. Who is it?

Q. George A. Benton.

—. ——.

Q. I would like to know just what your approach was to that firm?

A. More than anything else, on the volume of business he was doing.

Q. On the volume of business that he was doing, is that correct?

A. Yes.

[fol. 1462] Q. Are you familiar with the rates and charges of commission men at the Chicago stockyards?

A. I could not tell you without taking one of their circulars and reading it off. I don't know it, they are all alike.

Q. Now, let us assume this, that if the owner of the firm were to draw the same amount of salary which your committee has allowed him, and if in order to get that salary it would require an increase in rates by 20 per cent or 100 per cent, would you still believe that your committee was correct in fixing the salary which you have fixed?

A. Yes, as I tell you, I fix it at what I think the man is worth.

Q. And the way you determine what he is worth——

A. If he does not get it, it is his fault.

Q. —is by what he can earn?

A. Yes.

Q. Would you explain for us, please, just why the volume of business is material in arriving at your salary schedule?

A. An idea of about what he is doing, that is all.

Q. Even though he may be doing that business at a loss, that is just his hard luck?

A. That might possibly be.

As to what volume of business a company would handle in order for us to arrive at a minimum salary, I don't know what the minimum would be. This man may have some other means of livelihood right here in the yards, get a [fol. 1463] salary somewhere else, for all we know, selling goods for some other firm besides his own. Assuming that he is handling only livestock consigned to him, to his firm, what is the minimum volume that would determine what we should fix a minimum salary; it would be no receipts at all, I guess. If a man received one carload of business. he would not be in business. He would not be a commission man. If he received 37 carloads a year, all those fellows that you are talking about are men who in a great many cases are drawing a salary for working for some other firm and have their trade on the side. That happens a great many times, that is taken into consideration in fixing these salaries. If an owner of a firm were getting 37 carloads a year, that would not enter into my figures at all; I would figure what that man was worth if he wanted to go to work for a salary in that particular case. If one firm received one-third of the total volume of receipts on

these yards, the salary that we would then figure should be allowed to that firm would altogether be owing to circumstances. Circumstances whatever they were. Nothing of that sort ever came up. We would not necessarily de- [fol. 1464] termine their worth according to the volume of business. Other factors would be a man's ability to hire and handle men to take that amount of business and make some money with it. But if he could merely hire the men but fail to make money, he would not have the reputation then if he is not able to hire men to handle his business to make some money, then he is not as good a man as one who can do it.

We would still figure he was worth something along that same line, which would be the results. And if the results showed a deficiency, we would still feel he was worth something possibly if he was a good salesman; that would be because we believe he could go out and get some kind of a salary.

In our bank I do not hire the employees. I am not responsible by conference with other officers of that bank for what salaries shall be paid. My opinion that it is worth to sell a carload of cattle, whatever commission they can get out of it, and if the commissions were reduced, it would be only that reduced commission it would be worth. In some instances I would consider what a man could get [fol. 1465] from another firm, and if this man controlled a certain amount of business when he was employed as a salesman by another firm, that would not enter into our calculation or consideration as to what he is worth, or what salary he should pay. He might control some trade where he is working at present, and, when he left, he might not take any with him at all.

Mr. Dee Roy Kendall, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago, and am the cashier of the Livestock National Bank. I have been connected with a banking institution at the Stockyards, since January 1, 1896. During that period of time I have become more or less well ac-

quainted with a great many of the proprietors or the persons engaged in the livestock commission business at the Union Stock Yards, Chicago. I was selected as a member of the committee to appraise the salaries of proprietors who are engaged in this business during the year 1932.

I heard the testimony of Mr. Ryther, and I concur substantially in the statements made in direct and cross-examinations by Mr. Ryther to the questions that were propounded.

[fol. 1466] Cross-examination:

I know of no exceptions where I do not concur with the testimony of Mr. Ryther.

Mr. Charles Kelly, a witness called by the Respondents, testified as follows:

I live in Chicago. I am not engaged in the livestock business here at the stockyards. I was for a large number of years, engaged in the livestock commission business as a proprietor at Chicago and at other points. During that period of time I had occasion to employ a large number of persons in the livestock commission business. The period of time as proprietor extended from 1885 to 1922.

I was selected as a member of a committee of which Mr. Ryther was chairman, and who has just testified for the purpose of arriving at the reasonable salaries of proprietors engaged in business in the Union Stock Yards during 1932. And I acted in that capacity. I heard Mr. Ryther testify. I could hear only part of it. I heard him testify with reference to the methods employed in arriving at the conclusions reached by the committee, and the length of time that was devoted to the work. Generally speaking, I concur substantially in all of the statements made by Mr. Ryther in response to questions propounded to him on direct examination as well as those questions propounded by [fol. 1467] Mr. Miles for the Government.

Cross-examination:

As to what respect if any I do not concur with Mr. Ryther's testimony; in putting my own testimony in there, in grading these rates, I went largely by the men that I

knew over there covering a good many years while I was in business. We discussed it backwards and forwards many hours. Now, there were five of us, now, practically, over there, but here would be one man that I would not know so well, and they would know extra well, and another man that I would know extra well and they would not know so well, and we would each of us give the other one the benefit of what he knew and figured it out.

Q. Do you have anything in mind that you would wish to change in Mr. Ryther's testimony, either direct or cross examination except as you have already testified?

A. I think you should bring out there more clearly the value of the men there who don't make as much money as they were allowed in salary, that should come out more clearly and if you will allow me to illustrate this in my stockyard way.

Q. Will you do that?

A. A number of years ago, I took over a firm at Kansas City. At least, I hired the two members. There was no [fol. 1468] firm to take over, Carnes, Ratliff and Company. There were two members of the firm and I won't be positive about the year, but about 1918 or 1919 they had somewhere between $30,000 and $35,000 worth of business and they did it at a loss. I hired those two men, one at $4,000 and the other at $6,000 and I made a profit out of them. That is, on the management; the men had ability and could do the business but they needed the man to manage it.

Q. Is there any other suggestion that you wish to offer?

A. There was one question you asked Mr. Ryther there that here was a man, one was devoting ten per cent selling and ninety per cent in management.

Q. Correct.

A. And the other one, reversing it, 90 and 10.

Q. Yes, sir.

A. And you wanted to know if you would make any difference in their salaries.

Q. Assuming that other things were equal?

A. Yes, sir.

Q. All right.

A. One man might be worth three times as much as the other. I will give you one illustration of that. My brother and I were in the commission business here in Chicago from 1885 to 1910, when he died, and he had two-thirds in-

terest in the business and I had one-third. I devoted all my time, practically all of my time, most of the time to selling and he did to the management. He had a two-third interest and I had a one-third and he was underpaid and I was overpaid, and I think I can prove so by fifty people over there at the stockyards.

Q. Just how would you determine the fact that he was underpaid and you were overpaid?

A. Well, from an ability standpoint.

[fol. 1469] Q. How would you determine that ability?

A. The ability to run the business, to manage it and handle 500 men and I could only handle a few in my department. A general can handle an army and a captain only handles his company.

Q. My thought, in propounding that question, was not so much to determine the man, but to determine whether there should be a difference between the manager's salary and the salesman's salary and I wanted to assume that everything was equal and the ability of the men were equal.

A. Well you cannot take any two managers there of the same ability. Now, there would be running some lines of business, you would have a manager that would go ahead and do it fairly well and some salesman in a department where they had a big volume of business in that department would be lots more valuable than that manager. On the other hand, it might be otherwise, the managers would be more valuable. You have to take individual cases. It is like a doctor. He cannot prescribe for all of us in this room if we should all get sick. He cannot give one prescription to fit all of us.

Q. In other words, doesn't it boil down to this, in your mind; it is the man, the person himself?

A. Personally, it is the person himself.

Mr. Harry McNair, a witness called by the Respondents testified as follows:

Direct examination:

I reside in Chicago and am engaged in the horse commission business, with headquarters at the Union Stock Yards, Chicago. I have been engaged in business at the Union

Stock Yards since 1893. During that period of time I have become acquainted with a number of the proprietors en-
[fol. 1470] gaged in the commission business at the Union Stock Yards. I was chosen as a member of the committee to appraise the salaries of owners of livestock commission businesses engaged in that business at the Union Stock Yards, Chicago, and I entered upon that duty, and participated in conference with and concurred in the conclusions reached by that committee. I heard this morning Mr. Ryther, the chairman testify; I heard Mr. Kendall as well as Mr. Charles Kelly. I heard the questions asked and the answers made. I concur substantially in the answers made by each of these gentlemen and the questions propounded on direct and cross examination. There is nothing that I would like to add to the testimony given by either or all of these gentlemen.

Cross-examination:

I am not a member of the Exchange. To my knowledge none of the members of this committee was a member of the Live Stock Exchange.

Respondent's Exhibit No. 11 being report of Appraisal Committee was received in evidence.

[fol. 1471] Earle D. Mudd, being duly sworn, testified as follows:

Direct examination:

From 1901 to 1907 I was in the service of various railroad companies as time keeper and accountant in the transportation department and as maintenance accountant and car distributor in the General Superintendent's office. From 1907 to 1911, I was employed by the Southern Pacific Railway Company as accountant and later as chief accountant progressively in charge of several branches of the accounting department. From 1912 to 1914 I was chief accountant to the comptroller and later auditor of disbursements of the Illinois Central Railroad Company in Chicago having an organization of between 200 and 300 accountants under my supervision. During 1915, 1916 and 1917 with the Inter-

state Commerce Commission, I was chief accountant in charge of the accounts of all telephone and telegraph companies relating to federal valuation for ratemaking purposes. From 1918 until 1926 I was the assistant comptroller, expense control manager and operating manager progressively of the National-Bellas-Hess Company, a mail order house ranking third in size. During 1927 and 1928 I was special accountant with Roberts-Pettigrew & Woods Corporation, public accountants in Chicago during which time I prepared a complete revision of the interstate commerce commission systems of accounts as used by all railways. During 1929 and '30 I represented McDonald Bros, Inc. industrial engineers of Boston. In 1931 I was again with Roberts, Pettigrew & Woods Corporation. At this time I was in charge of the accounting work for the respondents in the commission rate cases at Kansas City and St. Joseph, Missouri. From 1931 to date I have been engaged in the public practice of accounting with offices in Chicago. My work has included preparation of cost and other data for the St. Louis Live Stock Exchange and Chicago Live Stock Exchange in connection with their rate cases before the Department of Agriculture.

[fol. 1472] 1. General Explanation

(a) Exhibit No. 12 consists of a series of schedules Nos. 1 to 33, inclusive, which have been prepared by me as Consulting Accountant for the Chicago Live Stock Exchange, on behalf of its members, for the purpose of presenting to the Secretary of Agriculture in connection with his investigation of livestock commission rates charged at Union Stock Yards, Chicago, under Docket No. 402, evidence showing the character and volume of business handled by each of the respondent members of the Exchange, the costs which were incurred by them in the conduct of their business during the year 1932, the amount of commissions received by them for the sale of livestock during the same year, and the amount of profit or loss which resulted from their operations.

(b) Inasmuch as the accounting forces of the Secretary of Agriculture made a detailed audit of the books of accounts of each of the respondents for the entire year 1932

and analyzed the sales and purchase accounts for the same year, I did not duplicate their work but have used their audit reports and statistics (Government Exhibits Nos. 16, 49 and 50) as a basis for my own studies and exhibts, having taken exception to the Government figures whenever necessary to accord with my differing views, and having applied my own methods instead of those used by the Government in the distribution of salaries and expenses to the several species of livestock handled and as between the several "modes of arrival" or rate classifications thereunder.

2. Reconciliation of Government's Costs and Respondents' Costs

(a) The differences between the Government's aggregate costs for all Chicago Live Stock Exchange firms and the respondents' aggregate costs are, as follows:

Government's Costs (Gov. Exh. No. 49 page 51)	$2,759,073.08	
Interest on Capital (Gov. Exh. No. 49 page 96)	45,989.45	
Government's aggregate costs		$2,805,062.53
Owners' Salary Appraisal Adjustments	$353,608.00	
Administration Salaries not charged to branches	11,100.00	
Expenses of other branches not charged to Chicago	2,722.00	
Interest on capital requirements	11,109.55	
Total additions	378,539.55	
Less—Country selling & buying salaries	2,276.00	
Net additions to Government's costs		$376,263.55
Respondents' aggregate costs		$3,181,326.08

3. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Owners' Salary Appraisal Adjustments

(a) These adjustments were made necessary by reason of the fact that 56, or 29% of the 193 owners of respondents' firms did not carry themselves on their books of account at any salary whatever during the year 1932. In the other cases, the owners either carried themselves on their books at nominal salaries, or at salaries which they themselves had fixed. It was obvious that in order to arrive at complete and correct costs a reasonable allowance for the value of owners' services would have to be determined and included.

[fol. 1473] (b) However, the Government, in its attempt to rectify this situation assumed in those cases where the owners had not carried themselves on the books at any salary whatever, that it would be proper to allow as a substitute therefore whatever amounts of profits these owners had drawn during the year 1932. In those cases where owners carried themselves on the books at nominal salaries, or at salaries they themselves had fixed, the Government made no attempt to adjust these amounts to proper levels in the determination of costs.

(c) The respondents, realizing that these omissions would result in an improper and serious under-statement of their costs, arranged for the appointment of an Appraisal Committee to place a value upon the services of each owner. This committee consisted of five competent and disinterested men not engaged in the livestock commission business but who were acquainted with the commission firm owners and their business. As a further basis for their deliberations, the committee was furnished with the personal and business record of each of the owners, together with a record of the volume and value of business handled by their respective firms during the year 1932. At the bottom of this form provision was made for the committee to insert the value it placed upon each owner's services, and to sign. These records will be offered in evidence by another witness, but the results of this appraisal may be found on schedule No. 11.

(d) I had no part in the appraisal other than to supply the committee with the necessary records just mentioned, except that I instructed the committee not to give any weight whatever in its considerations to the owners' business getting ability or so-called following. On the other hand, it was pointed out that the volume of business actually handled by the owner's firm was an economic factor to be considered from the standpoint of operations and responsibility.

(e) Schedule No. 11, which lists the firms in alphabetical order, shows the name of each owner, the number of months he worked during the year 1932, the amount of profit or salary drawn during 1932, the appraised fair value of services he rendered during 1932, the gross difference between the appraisal and the amount of profit or salary actually drawn, the percent of time, if any, which he devoted to other commission firms or to the loan or other outside business, and the net difference between the appraisal and the amount of profit or salary actually drawn which amount was added to or deducted from the Government's figures in arriving at respondents' costs.

(f) A review of the results of this appraisal from an accounting standpoint, by which I mean its effect upon the costs, has satisfied me that the values placed upon owners' services, considered collectively, are fair and reasonable. When considered individually, I find a few cases where the volume of business handled by the firms was so small as to cause even an extremely low appraisal to result in an extremely high cost. However, the fact that these few cases involve but small volumes and amounts prevents them from having any noticeable effect upon the costs, particularly unit costs, of respondents' operations when considered collectively.

(g) In my studies I have tested the effect of these appraisals upon respondents' costs by grouping together the costs for those firms whose owners were given the same salary ratings by the Appraisal Committee and setting up their composite unit-costs opposite and respective salary levels, the highest salary being shown at the top and the lowest salary at the bottom. This was done separately for each of the three classes of owners according to the species

Iowa and Illinois, the solicitation by county agents for a particular firm. I find direct buying in the Iowa territory injurious to our business. I don't feel the effect of direct buying in Texas and Oklahoma, but other places I do. It has made it more difficult to get new business. The effect on the business of Rice Brothers if we got no new business would just fade away like a leaf in the fall.

I do not feel that Rice Brothers are making any material or excessive expenditures for the purpose of getting new business. In spite of all the effort we have been able to make the business has shown a decline. I feel that the service we are giving our customers today is better than the service we gave them five years ago. As to whether it costs Rice Brothers more to perform the service today than it did five years ago; the salaries have been lowered; from that point, no. But from the effort expended, yes.

There is a cattle market at Chicago for each grade and class.

Cross-examination:

I am the only fat steer salesman for our firm. I cannot tell exactly what proportion of the entire cattle receipts [fol. 1426] would consist of fat steers. I would approximate it would be forty per cent. And I sell those without assistance in the actual selling. I think it is more difficult to sell a straight carload of fat steers today than it was five years ago or ten years ago. The difference is the competition on the part of both buyer and seller to be sure that the buyer does not out-trade you and to be sure that your competitor does not outsell you. I hold over cattle whenever the owners request it; and I hold over, when in my judgment, we are not bid the value of the livestock. That will happen every day. I mean we constantly will have a load or two or five; I mean five animals, or ten or three or one, that we would hold over and we would hold them until I was convinced that there was no opportunity of getting more for them, that I have been mistaken in the market, or in my judgment of the value of the livestock.

I received straight carloads of steers this week; the greatest number that I received on any one day was on Monday and I think there were eighteen carloads. There were three men engaged in selling those eighteen cars. I personally sold ten carloads of the eighteen; sorting was

required on all but two cars. Two cars were sold as they [fol. 1427] were consigned. Of the sixteen cars that were left I could not tell you the greatest amount of sorting required, but more than twelve different lots, and the lowest amount required on any one of those cars was two.

I personally sold about ninety head arriving by truck on this Monday. On Monday of this week there were 19000 cattle on sale, the marked opened very slow, except on heifers and light yearlings. The heifers and light yearlings were slow to ten lower. They started bidding on the other cattle twenty-five to forty lower, but if a man had guts and determination he got his cattle sold ten to fifteen lower before the day was over. The ninety head of truck cattle were sold in approximately fifteen lots. I made my first sale at approximately 9:30 on Monday morning. I made my last sale on Monday at two minutes to three.

[fol. 1428] Mr. Lester Marion, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago and am a live stock hog salesman for the Bowles Live Stock Commission Company.

I am not reasonably busy in the handling of hogs now received by the Bowles Live Stock Commission Company. I attribute the falling off of the hog business of the Bowles Company in the last few years to direct buying. I would say that direct buying has reduced the volume of hogs coming to the Bowles Live Stock Commission Company, seventy-five per cent.

Cross-examination:

At the present time I am handling the hogs consigned to the Bowles Live Stock Commission Company and the situation in 1932 was the same as at present. I have the assistance of a yard man. I was given a reduction in salary in 1933. It was 25 per cent. I am hired on a salary plus commission. I get fifty per cent of the commission, on my own personal business. I have a following of my own that specify that they are mine. These hogs originate in various places. I obtain my following by going to the country and [fol. 1429] meeting these people.

The circumstances which I believe take fifteen times as long to sell a cooperative load now than it does a straight carload are, cooperative loads consists of a lot of different owners and these hogs have to be checked and prorated, each owner, hogs have to be identified and how to grade them. On cooperative shipments we do sell them according to grades and class, and then prorate the weights later.

To describe such a load there are times when we get a cooperative load of 35 or 40 owners in them, and we have to check each one of these marks, know what that hog is, those hogs might be sold together, but they have to be prorated and you have to check all those marks and know what they are.

The checking is done before the sale is made and the prorating is done after the sale is made, after the hogs are weighed. The prorating takes quite a while. It is usually done after I go to the office. It is possible that I might sell it as readily as I would a straight carload. It varies.

I would say that we have received a load of hogs containing as many as forty owners. I do not recall any specific shipment..

[fol. 1430] To show a pen of hogs to a buyer usually takes five to ten minutes. We sometimes have hogs of different owners arriving by truck in the same pen. We are not able always to show them all at one time; you have to sort those different grades; you cannot show all grades to one man. We sort them according to grade and then show each grade to a buyer.

I sold hogs before I came to Bowles for Rice Brothers, Frazier, and Dolan and Ludeman.

As to why I am working twice as hard now as I did three years ago; it has been a little bit longer than that; three years ago, you could take one buyer in the alley and sell them the whole alley, no sorting, no grading; and, today, you have to sort them up into anywhere from two to seven different grades and you have to get that many buyers. A lot of that change has come about in the past three years; it just started six years ago.

I said that Bowles' business has decreased about 75% over the previous years. That is just in hogs. I would say that the reduction has taken place in about eight years. I was not with that firm then. At that time Charles Goepher, Frank Conley and Lee Waffle were selling hogs for Bowles.

Frank Conley is with me now; Goepher is dead; and Mr. Waffle is out of the market. Each of these men control [fol. 1431] business. I think Goepher was with Bowles at the time he died; he took a vacation and then died.

The service now rendered by me is better than it has ever been before, because we put in longer hours, we have to watch our stuff more closely, a small amount of business that comes here has made competition so much keener. Everyone is fighting for everything they can get.

G. A. Benton, a witness called by the Respondents, testified as follows:

Direct examination:

I live at 4611 Drexel Boulevard. Am in the live stock commission business. I am the owner of Benton and Company.

We sell everything in the way of live stock.

Until I was sixteen or seventeen years old I was on a farm, born and raised on a farm, and from that time on for twenty or twenty-five years, I was in the dairy end, I was with De Laval Cream Separator Company for twenty-two and one-half years, and then I went into the live-stock commission business with a Mr. Schroeder under the name of Schroeder, Benton and Company. That firm was in existence five years. It was dissolved by mutual consent of the partners.

[fol. 1432] Then I started handling my own business. My thought was to start a firm of my own, employ a sales force and carry along, but the volume had gotten down so low that I could not see my way clear and then there was the uncertainty before me of this direct buying which looked to me like the business was slowly dying, so in order to mark time I made a clearing arrangement with the Mullen Commission Company, and cleared my business through them, used their sales force for three years. At the present time I am carrying on on that plan, carrying on my business through Gillogly and Company. Gillogly and Company do all my sales work both in cattle and hogs and we do our own billing and advertising and letter writing, and I do my own soliciting, pay my own road expense.

Gillogly and Company look after collections and remittances for the livestock that I handle. I have full charge of the management of Benton and Company. It is a problem right now of getting new customers to take the place of those who are drifting away to other markets.

The methods I use and follow in getting new customers; I do considerable road work, I practically use up my entire sixty-three days a year because unfortunately my territory is my home territory where I was born and raised [fol. 1433] right along the Mississippi River and all of my home territory has been hit harder, I think, by direct buying than almost any other section, so I have had a hard fight to keep any of that business out there coming here from going to Savannah and Dubuque and Muscatine and Marquette, and all those river points, so my fight has been to hold the part of the trade I had and bui-d up new ones.

As to whether our firm is rendering a good service to our customers, from the fact that a great percentage of my customers repeat, it makes me think that we are giving service. They like it, at least, and come back for more.

I am not making any wasteful or extravagant expenditures for the purpose of building up my business.

Cross-examination:

I have never sold livestock here in the stock yards. I pay Gillogly and Company Thirty-five per cent.

On my soliciting trips, if I hear of a man that has got a bunch of stock, while I am in the territory, I go and look him up, but I generally try to keep in touch with my old [fol. 1434] customers and hold them if I can. I generally give them the preference. I naturally solicit producers and farmers who have been sending their live stock to other firms on the Chicago market.

Mr. Paul A. Filler, a witness called by the Respondents, testified as follows:

Direct examination:

I am vice-president and treasurer of Filler Wilson and McClelland. P. A. Filler is president of the corporation. Charles Filler is cattle salesman. Paul A. Filler, hog

salesman and general manager. Tom Hayes, yardman, P. W. Wilson, cattle salesman. Ralph Von Berner, yardman. Le Roy Young, office manager. Rita McInerney, stenographer. C. C. Wood, check-up service. Barney Hagney, yardman and scale man, and Anderson, yardman in the cattle alley.

Our employees were not reasonably busy in the conduct of business during the year 1932. The reason was we had less volume. There has been a considerable reduction in the volume of our business. We have made a corresponding reduction in expenses, but that has not helped. We have sustained a loss of capital. We have made salary reductions in the last year. We have curtailed general ex-
[fol. 1435] penses. We curtailed them very much so. I do not know of any way that we can make a further reduction in our expenses without impairing our service to our customers. I have been selling hogs since 1919, since I came home from the Service.

Cross-examination:

Corkery is employed on a commission basis. I keep thirty per cent. He sells principally his own trade. George Von Berner helps me sell hogs. He operates under his own firm name and we clear his business. We exchange work. We work on the same hogs. He receives some cattle business, very little. Our firm handles his cattle business also. The basis for compensation is the same. We get thirty per cent. He stands his own expense. We yard the hogs together and sell them together. Our office makes out his account sales. Mr. Von Berner has his expense of advertising, solicitation and stationery, stamps and what other expense there is other than office.

I sell the bulk of the hogs; he sells principally his own, but we work together.

My duties as manager of the firm are watching every detail. My brother has supervision over the cattle division. My work as manager is performed chiefly in the office. At times I make out bills, pro-rate, sign checks, make re-
[fol. 1436] mittances. Personally I assist in doing that at times, it depends upon the volume. My brother has authority to sign checks. My brother is on a regular salary. The two Fillers are hired on a straight salary. If we got more volume, we would have to work longer hours, which I would

be willing to do. It would require more help. In this business, there is never enough volume. We can always take care of the volume. We could not do it with our present force; we could adjust the force with increasing volume. I think we could handle more volume with our present force.

The way the conditions are now and the way the market is and how tough it is to get sold out, and we peddle our stuff all day long, we could not handle an awful lot more, but we could handle some, but if the market speeded up, we could handle a great deal more.

Speedy days on the market now are few and far between. We peddle and we peddle until we get blue in the face and then finally we give in. I endeavor to sell out each day.

I personally determine the amount which our firm will spend for advertising. We place no limitation on the amount we will spend for that purpose, but we are spending [fol. 1437] as little as we can to maintain our business. I would like to spend more. The amount we are spending is not adequate to maintain the business, but, under the set-up, it is kind of useless to go out and try to get business; because the directs and the part of the big packers in trying to divert livestock from the market. You can expend some for that purpose, but you cannot expend it like you used to.

Recross-examination:

A. T. A. Filler is my father. He was not selling cattle in 1932. He drew a salary from the firm. He controls business.

Willis H. Brott, a witness, called by the Respondents, testified as follows:

Direct examination:

I have quite a list of customers. If I received all the livestock they produced and handled, I would have enough business to retire on in about three years.

Cross-examination:

I did not mean to say that if all of my customers sent me all their busines we could handle it at the present time under our present set-up. You would have to have a set-up com-

[fol. 1488] mensurate with the amount of business you handle, which I would not know until we received the business.

We could handle more business with our present set-up if we could get it; I would imagine twenty percent more.

Mr. Montie Conklin, a witness called by the Respondents, testified as follows:

Direct examination:

I am one of the stockholders of Conklin Brothers Live Stock Commission Company, a corporation. I am a cattle salesman.

Cross-examination:

When I go out to solicit business from the farmers and appraise cattle; if I appraise the cattle I solicit the business. Sometimes other commission men have been there and looked over the same cattle and solicited the business. Notwithstanding that I would still request or ask that he ship to us. The other commission men probably have a chance to get him if he has not been a shipper of ours, but if he has been shipping to us for years, and I give him satisfaction, I go out and see his cattle and tell him what I think they will bring, and I am pretty near going to get them when they come. The fact that he has been shipping to us for years, [fol. 1439] and I have been out there would not deter other commission men from soliciting his trade.

I have been selling cattle about thirty years on the Chicago yards, at Sioux City and St. Paul before coming here. I came here about twenty-seven years ago. And I have been selling ever since.

I do not recall the greatest number of carloads or the greatest number of head of cattle that I personally sold in any one day; I could not do that without going over the books. I could not approximate it off-handed. Off-handed I could tell you Monday of this week about eighteen carloads. I did not sell them all. Some of it was butcher stuff. I think about sixty percent of them were steers and the butcher stuff was sold by Mr. Tormoehlen.

Cross-examination.

Conducted by Mr. O'Bryan:

Q. Mr. Daly, in answer to one of Mr. Miles' questions, I believe you stated that your cattle salesmen No. 4 and No. 6, were as efficient as any salesmen on the yards. Are you familiar with the cattle salesmen who are non-owners of all of the other commission firms on the yards?

A. How do you mean?

Q. Are you familiar with what they do or what they are paid?

A. I do not know what they are paid, no sir.

Q. Do you know what they do, do you know how many cattle they sell?

A. Some of them.

[fol. 1440] Q. Did you mean by your answer that if you paid one cattle salesman $3,600 a year and another $3,640 a year and some other firm pays the same kind of salesmen $8,800 a year and the next one $6,600 a year, that the Secretary should take from your answer and make a finding of fact that you have as efficient cattle salesmen as any on the yards, and that no commission firm should pay a cattle salesman more than $3,600 a year?

A. That depends. Some of these big firms have got fellows working for them, they are paying bigger salaries than I can pay, but they are men who probably cannot sell cattle as good as my men. Some of the firms paying the bigger salaries may be drawing enough trade to pay that salary. That has a lot to do with it. But men for men, I have had splits with all of them, and there has none ever beat me, so my men must be as efficient as anybody here.

Q. But you cannot compare their efficiency without having specific details as to the men on which you are making comparisons?

A. Well, you need not do that. The salary does not always make the man.

Q. That is very true. That is just the point.

A. Yes. I might hire you to sell cattle at $300 a month and somebody else hire you at $600, which would not make you any better.

Q. I would have to give you results?

A. It would be better for you.

Q. You would not keep either one of these cattle salesmen in your employ if you did not think the results warranted the money you paid them, would you?

A. If I did not think they were worth the money, no, sir.

[fol. 1441] Q. If they got results which, in your opinion, were greater than the money you paid them, and threatened to leave you, you might pay them more to keep them?

A. I might, I cannot say anything about it. I might get somebody I thought could fill the position just as good for that money.

Q. The point I am trying to bring out is that you are not trying to compare the efficiency of your two cattle salesmen with all of the cattle salesmen on the Chicago yards as to their ability, are you?

A. Well, I have got a right to an opinion.

Q. I know that you have a right to an opinion, but you must have some facts on which to base that opinion.

A. Well, the results of our sales on competing shipments is the best advertisement you can get.

Q. That may be very true, but isn't it a fact that there might be other cattle salesmen in the yards who day in and day out might get better results than even some of these cattle salesmen of yours?

A. They might be and they might not.

Q. So you don't know?

A. No, nobody knows.

Q. So that unless——

A. But when I say that mine are as efficient in my estimation as there are in the yards, I don't care whether someone else pays a bigger salary or not, that does not make the salesman.

[fol. 1442] Q. Do you mean by your answer that because you pay a man whom you consider as efficient as any on the yards only $3,600 that no one else in the yards should pay a cattle salesman more than $3,600?

A. I supervise all my cattle selling myself. There is not a steer goes out of the alley that I don't put an O.K. on. I am back of the market all the time.

Q. I am trying to get your answer clear, because as you gave it before, the Secretary might very well make a finding of fact in this case that: Mr. Conklin having testified that his cattle salesmen were as efficient as any on the yards, and Mr. Conklin only paying his cattle salesmen

$3,600 a year, no other cattle salesmen on the Chicago yard should get more than $3,600 a year. Did you mean that by your answer?

A. I meant that my men are as efficient in my estimation as any in the yards, and if he was not, I would get somebody who was.

Q. I am asking you if you meant what I said might be found from your answer by the Secretary?

A. As I said before, I don't know what the other fellows are paying, they may be paying $10,000.

Mr. John P. Bowles, a witness called by the Respondents, was recalled to the stand and testified as follows:

Cross-examination:

Indirectly I manage the Kansas City office, I am general manager; I have my man under me there, Thomas L. Bowles is the manager of that office, but I am the manager and go there.

[fol. 1443] That office requires some of my time and attention. The last year or so I haven't given it so much time; it don't need much; there is nothing to do, but I used to go down there monthly, sometimes oftener; sometimes I would skip a month.

The first day of February, I cut my salary; I cannot tell you how much, not a great deal, but some, and my son's salary and three of the bookkeepers, and then everybody dropped twenty five per cent, and the same thing was done in 1932.

I personally do not solicit so much now.

"I do not go to the country; I am invited and I go occasionally, yes, but I send my men usually. We have innumerable letters, inviting us and begging us to come out to see the cattle. I cannot always send them when they want them, but, if I do send one of the salesmen, if it is cattle, it will be a cattle man; if it is sheep, it will be a sheep man; if it is butcher stuff, it will be the butcher salesman; and, of course, they ask us often to come out and see these cattle, and there is not a load, or something like that, and, if we went, our expenses would be more than the commissions a

good deal, so we do try to catch up and make a circle around that neighborhood and get some more."

Those trips are not confined just to our customers, we will make new ones if we can; we are always leaning out for new trade, because they are dying out and quitting and everything else and we wouldn't have any business after a while, if we didn't. We would have to solicit the business of farmers and producers who ship to other commission [fol. 1444] firms on the Chicago market, because everybody ships to somebody; they take mine away from me and vice versa, that is, they get them, and, when they pay our commission, they do not owe us anything; they are free lances.

[fol. 1445] Mr. G. A. Ryther, a witness called by the Respondents, testified as follows:

Direct examination:

I live in Chicago. I am Vice-President of the Drovers National Bank. I have been in the banking business in [fol. 1446] the evirons of the Chicago Union Stock Yards since September 1888. During the time intervening between 1888 and the present time I have become acquainted with practically all of the proprietors of the livestock commission houses engaged in that business at the Union Stock Yards at Chicago.

I have come into personal contact with those persons. I was chosen by the Chicago Live Stock Exchange to act as the chairman of a committee for the purpose of appraising the salaries of the proprietors of the livestock commission concerns doing business at the Chicago stockyards. The names of the other members of that committee are Charles Kelly, Roy Kendall, Harry McNair, and Mr. Tomhave. Respondents' Exhibit No. 11 for identification is the record prepared by Mr. Mudd which was considered by me and my committee.

I think we must have put in something like eight or nine or ten hours in two days. I don't know exactly what time we started or how long we were there. My committee and I tried to consider all the information shown on that sheet surely. We started in on the volume of business a man did; the most I can say is like the amount of hogs or cattle,

whichever it was, and how it was handled. We considered the class of work that the person did as shown on the top line. Then we had before us the volume of business done as shown in the books appearing at the top of the page. [fol. 1447] Next we had the number of years' experience in the livestock commission business. We also took into consideration the years of experience in the other branches of live stock business, either with the packers or in the country raising livestock; as well as the number of years of experience in other lines of business than livestock. Also the approximate per cent of time spent in the division shown in the books following No. 8, and then the committee wrote at the bottom of each sheet the amount which we determined upon as the sum representing the fair value of each person's services in the livestock commission business for the year 1932. In every case the decision as to the sum of money shown on each sheet represents the consensus of the opinion of all of the members of the committee.

Cross-examination:

I would not say that I was acquainted with all of the proprietors of the Respondent firms where we appraised; there may be somebody that I was not acquainted with in the firm. They change occasionally, you know. They come and go. I met them in the banking business. I am—well, I usually visited the Exchange Building and called on these parties, these firms, once or twice a week, call on what I could one week and the rest the next, and all that sort of thing. That was not in preparation to make this appraisal. I say I have been doing it there for 30 years in the banking, calling on these customers, some of them every week, and [fol. 1448] then I met them in the bank every day, in the banking business.

Q. And did you mean, then, that in each case where you and your committee appraised the value of the services, that you took the information placed before you and gave consideration to no other fact, is that what you mean?

A. No, I do not mean that. I took the information put before me and I took what I knew myself personally.

Q. So, you did then take into consideration facts that were personally within your knowledge?

A. Yes.

Q. And, with reference to those proprietors with whom you had no actual acquaintance, what did you do, consider only the facts placed before you?

A. That is all I could, if I didn't know them.

I do not know for sure if at each of the conferences or meetings, all the members of the Appraisal Committee were present; they were all present at any time, anyway, I know, I do not know at the last meeting whether they were all there or not. We went through these different accounts we came to. I would have to ask somebody whether or not they were all present at the time that the figures showing what we consider their worth were written out. I cannot tell myself. I do not know for sure whether there might have been one away part of the time or another time, but anyway, they were all, every man, every member of the committee went through this thing, firm by firm, before it was signed, and the various members of the committee, going through this information, made up that nine or ten hours. I presided at the meeting. About what was said or [fol. 1449] done, nothing more than that we started in on this thing and went right at it. Every item in Respondents' Exhibit No. 11 was read to all, I was the one doing the reading, I was chairman. Lots of times there was discussion of each item. Lots of times there was not. I might possibly have suggested a figure with which the committee concurred, and somebody else might possibly start in, we did not always agree on the same figure at first. I could not tell you in how many cases we did not agree. We had to get ourselves together a little on it sometimes. I don't think there was any one particularly far apart except on some of the smaller ones. On what would be called the larger firms, the entire committee were in accord each time.

I was one of the committee to make the 1931 appraisal. It was the same committee for 1931. At the time we made the 1931 appraisal we did practically the same thing that we did for 1932 except we had to use more time on the first one going through it the first time. I couldn't say how much more time. I know we used considerably more than that because we met two or three times. When we made the 1932 appraisal, which is the present one, we had our 1931 figures before us. We did not take the 1931 figures and practically agree that the 1931 figures were correct;

it was altogether owing to the volume up and down and how it was handled. I don't think in a great many cases [fol. 1450] that the 1932 figures disagree with the 1931 figures in many respects. It is not true that we practically took the 1931 figures with very little change, but there was not enough difference in a great many cases to make any change. I stated that in the 1932 figures that we considered the volume of business; assuming that the business had fallen off 25 per cent between 1932 and 1931, we took in consideration the times and what was happening and what might happen later in lots of cases. Our figures are not exactly based on hypothesis as to the future. I do not know as we gave any particular weight to what might happen in the future. In taking the proposition that we learned in 1932 that the business had fallen off 25 percent, to what extent, either in percentage or dollars, that would affect our figures for 1931; not at all. That might possibly have some weight in some cases. I could not say any per cent. I do not know. I could not tell you that. At the time we began making our 1932 appraisal, we received no more instructions than we were told what we were there for and that was to determine the value of these different men. I do not know who told me. We had to know something; that was, I don't remember who it was told us, we were told what the object of this deal was, and that was all there was to it; it might have been Charlie Wilson or it [fol. 1451] might have been this gentleman here, Mr. Mudd. His suggestions were not written.

Our appraisal was for what we may call a proper allowance by way of compensation for the owners of the business. In lots of cases, the owner was a salesman. We were appraising the owners. Assuming that one owner does nothing but selling and another owner does nothing but management; if those were the only differences, there would not necessarily be a difference in our appraisal figures.

Q. Assume, now that an owner spends ten percent of his time in management and 90 per cent in selling, and assume that another owner reverses that, spending 90 per cent in management and 10 per cent in selling; on these facts only, what difference would you make in what we call the man's salary?

A. None.

Q. You regard, then, in your appraisal, management as being on equality with selling?

A. I do not regard it in such manner at all. I regard a man the way he handles his business, whether he handles it himself or hires somebody, if he has got the ability to hire a man to do it for him, that is all right, to sell it or anything else.

Q. But, in the example I propounded to you, you said you would make no difference between the two salaries if there was nothing that has to be considered.

A. I cannot see anything else.

[fol. 1452] Q. Now, you have testified, I believe, that you had the volume of the man's business as part of the information?

A. That entered into the case every time.

Q. What weight did you give to the volume of business done?

A. Well, we just simply went into the whole consideration of the whole matter, I couldn't give any figures or weight or volume or anything else, just the way the man handled his business and the results.

Q. Let me put it this way: as between two men, assuming that everything was equal in your mind and that up to that point you would decide that the salaries should be the same, but that you then learned that the business of one man was one-half the business of the other, what difference, then, would that make in your consideration of the salaries?

A. Well, that would not make any particular difference either.

Q. All right. Now you have testified that it is the way the man would handle his business?

A. Yes.

Q. Is that the major item in your mind?

A. That is the only thing there is in the whole deal.

Q. The only thing, the way the man handles his business. Now, just what do you mean by that?

A. Well, one man might be able to hire the right kind of people to do his business in the right kind of a way, and at a less overhead than somebody else could.

Q. That, then, would go to the amount of profit, if he were able to hire men and do the business at less overhead, is that correct?

[fol. 1474] in which they specialize, and the costs used for this purpose are those applying to the respective species. The results of this study are shown below and indicate clearly that there is no correlation between salary and unit costs, unless it be that the higher salary ratings as given by the Appraisal Committee are to be found in firms having the lower unit costs.

No. of Owners	Appraised Salary	No. of Cars	Unit Cost
	Cattle & Calves		
1	$27,500	4,496	$20.67
2	25,000	7,598	21.62
1	22,000	3,189	21.06
1	20,000	5,334	17.62
1	18,000	2,126	20.53
8	15,000	17,088	22.58
9	12,000	8,909	26.47
12	10,000	14,361	23.74
3	9,000	1,584	32.29
4	8,500	2,060	23.26
10	8,000	10,265	26.10
1	7,500	830	27.35
4	7,000	3,531	26.15
1	6,500	1,012	32.83
9	6,000	7,137	27.81
1	5,500	1,012	32,83
18	5,000	17,882	23.86
2	4,500	549	29.19
7	4,000	3,174	26.02
7	3,600	1,355	27.98
3	3,500	1,145	27.22
7	3,000	2,710	26.15
2	2,700	245	33.02
6	2,500	2,777	26.62
1	2,400	625	29.78
3	2,000	201	36.69
1	1,800	68	32.06
3	1,500	225	20.60
7	1,200	426	24.85

No. of Owners	Appraised Salary	No. of Cars	Unit Cost
	Hogs		
1	$18,000	1,543	$19.75
2	15,000	2,266	26.11
5	10,000	5,442	22.64
1	9,000	1,273	19.82
2	8,000	1,474	21.94
1	7,500	996	17.44
2	7,000	1,144	23.75
6	6,000	3,510	21.28
3	5,000	2,458	19.32
1	4,500	878	18.67
6	4,000	3,312	22.43
1	3,500	634	17.54
7	3,000	2,698	21.08
1	2,700	177	25.61
5	2,500	2,985	17.33
1	2,100	178	19.17
2	2,000	220	24.00
5	1,200	292	27.29
	Sheep		
1	12,500	1,079	$28.70
1	12,000	2,122	14.66
2	6,000	835	22.48
1	3,600	280	19.09
1	3,000	143	27.71

(h) Aside from my study of the possible relationship between salary levels and unit costs, and regardless of what may be the opinion as to the reasonableness of salary levels determined upon by the Appraisal Committee, it is fair to assume that the several owners placed on the same level by that Committee rendered service of somewhat equal value. Therefore, as a test of the Government's use of profits in lieu of salaries for the purpose of arriving at costs, I will group together those owners who were given the same rating by the committee and compare these ratings with the profit-salaries which were allowed in costs by the

Government. I shall also show individual appraised salaries in comparison with profit-salaries.

[fol. 1475]

Firm No.	Man No.	Appraised Salary	Profit-Salary	Firm No.	Man No.	Appraised Salary	Profit-Salary
48	1	$18,000.00	$5,775.83	50	1	$2,700.00	$1,869.35
				50	2	2,700.00	1,869.34
54	1	15,000.00	6,017.45	50	3	2,700.00	1,869.34
16	1	12,000.00	2,609.76	101	1	2,500.00	1,453.96
				82	3	2,500.00	1,967.78
19	2	10,000.00	5,300.69	95	1	2,500.00	1,677.36
19	3	10,000.00	5,300.66	39	1	2,500.00	2,576.31
19	1	10,000.00	5,300.70	44	1	2,500.00	2,117.73
78	1	10,000.00	9,430.35				
				15	1	2,100.00	2,043.35
27	1	7,000.00	5,917.47				
				98	1	2,000.00	390.56
35	1	6,000.00	5,907.93	68	1	2,000.00	2,351.88
74	1	6,000.00	3,370.57	65	1	2,000.00	1,131.18
82	3	6,000.00	4,248.76	86	1	2,000.00	2,087.20
8	2	5,000.00	3,985.65	3	1	1,875.00	3,312.51
8	3	5,000.00	3,919.62				
79	1	5,000.00	1,874.78	111	1	1,833.33	1,310.87
28	1	4,000.00	2,978.37	32	1	1,800.00	1,224.71
64	1	4,000.00	4,792.84				
91	1	4,000.00	1,567.34	5	1	1,500.00	1,054.96
				52	1	1,500.00	2,279.23
103	1	3,600.00	3,473.99				
87	1	3,600.00	2,314.18	31	1	1,200.00	204.00
87	2	3,600.00	3,884.18	41	1	1,200.00	263.89
67	1	3,600.00	2,016.00	60	1	1,200.00	712.00
				46	2	1,200.00	893.63
79	2	3,500.00	1,874.77	46	1	1,200.00	893.63
82	1	3,500.00	3,713.80	49	1	1,200.00	368.18
				76	1	1,200.00	1,404.47
12	1	3,000.00	35.12	102	1	1,200.00	1,300.32
84	1	3,000.00	3,754.58	88	1	1,200.00	984.97
14	1	3,000.00	1,896.82				
17	1	3,000.00	1,841.06	7	1	437.50	138.65
47	1	3,000.00	1,285.28				
9	1	3,000.00	4,907.88				
16	2	3,000.00	529.77				

(i) There can be no doubt whatever as to the need for adjusting the Government's costs so that they would reflect the value of services rendered by owners, and I know of no better method of handling a situation of this kind than the one employed by respondents, namely, the appointment of a competent and disinterested Appraisal Committee. And, from an accounting standpoint, it is my opinion that the values placed on the owners' services by the Committee are reasonable and fair both to the owners and the shippers as I have just indicated.

[fol. 1476] 4. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Administration Salaries Not Charged to Branches

(a) It is clear that where livestock commission firms have branches on other markets and the administration or headquarters organizations perform service for one of more of such branches, or where one branch performs service for another, the cost of such service should be charged to the branch benefitted by it and credited to the administrative office or the branch rendering the service. The Government has not taken such expenses into consideration in arriving at its costs.

(b) In the case of John Clay & Co., the affairs of its branches are administered by a general organization located in the Rookery Building, downtown, Chicago. It has been estimated that the cost of time devoted by the general organization to the Chicago branch located in the Union Stock Yards, was $13,000 for the year 1932, and this amount was properly charged into the accounts of the Chicago branch. However, the Government has eliminated the entire amount from the accounts in arriving at its costs. To this extent, the Government's costs with respect to this firm are under-stated.

(c) In the case of Merrion & Wilkins, the headquarter office at the Chicago branch devoted a part of its time to the firm's branches at Denver and Ogden and it was estimated that the cost of the time so devoted amounted to $1,200 for the year 1932. In the case of Martin Bros. & Co., the headquarter office at the Chicago branch devoted a part of its time to the firm's branch at Omaha and it was estimated that the cost of the time so devoted amounted to $700. However, the Government did not take these amounts into consideration in arriving at its costs for these firms and, to this extent, the costs are over-stated.

(d) In all these cases, the respondents have made the necessary additions to or deductions from the Government's figures in arriving at respondents' costs in order that the costs of operations at Chicago might be properly compared with the commissions earned at Chicago.

5. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Expenses of Other Branches Not Charged to Chicago

(a) In the case of Wm. R. Smith & Son, its branches at Denver and Omaha expended an amount estimated to be $2,722.00 for the benefit of the Chicago branch during the year 1932. The Government, in arriving at its costs, failed to take this expense into consideration and to that extent the costs of this firm's operations are under-stated.

6. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Interest on Capital Requirements

(a) There is a difference between the Government's and the respondents' calculation of interest on capital requirements amounting to $11,109.55. This difference is due primarily to the fact that the Government has arbitrarily placed a value of $750.00 each on memberships owned by respondents in the Chicago Live Stock Exchange instead of $1,006.43 as found by respondents, and secondarily because the Government used an interest rate of 7% as compared with 8% used by respondents.

[fol. 1477] (b) The respondents, in determining upon the fair value of memberships in the Chicago Live Stock Exchange, ascertained the actual cash consideration which was paid for each membership sold during the last five years 1928 to 1932 and by averaging these amounts so paid arrived at the value of $1,006.43. The details of these sales are shown on schedule No. 12-a, page 11. This record of sales will show that the amount of $750.00 used by the Government represents a "depression" value while the commission rates which will be fixed as a result of this investigation will doubtless be in effect for some years after the depression has passed.

(c) In connection with the difference due to variation in interest rate, it is noted that 7% was used by the Government in arriving at costs, while Dr. Dozier of the Department of Agriculture, an expert witness in this case, testified that 6% should be allowed in the case of fixed capital and 7% in the case of working capital. It is my understanding of Dr. Dozier's testimony that no consideration

was given to the element of uninsurable risk involved in the handling of capital requirements and I therefore believe that the rate of 8% as used by the respondents is justified.

7. Explanation of Differences Between Government's Costs and Respondents' Costs Due to Country Selling & Buying Salary Credit

(a) Country selling and buying service is an off-the-market activity not governed by prevailing tariffs, therefore, the costs of rendering such service should be eliminated. There was but little such service rendered during the year 1932 and records were not kept in such a manner as to separate the cost of this service from on-the-market service. In arriving at the estimated cost of this country service in order that it might be deducted from market costs, I have taken that proportion of the total selling and buying salaries as is represented by the relationship between the number of cars sold on and off the market. Schedule No. 7 shows how these amounts were arrived at with respect to each of the 13 firms involved.

8. Consist of Respondents' Costs

(a) The respondents' aggregate costs of $3,181,326 consist of:

Salaries of owners and employees, As per schedule No. 6	$2,488,359.00
Expenses and accruals, As per schedule No. 8	$ 638,144.00
Interest on invested capital, As per schedule No. 12	$ 57,099.00
	$3,183,602.00
Less country selling & buying credit, As per schedule No. 7	$ 2,276.00
Respondents' aggregate costs	$3,181,326.00

[fol. 1478] 9. Salaries of Owners and Employees

(a) The total salaries of owners and employees for each of the respondent firms are summarized on schedule No. 6. The figures in the first column on this schedule shows the

amounts of these salaries as they were taken into the Government's costs. The second column shows the owners' salary appraisal adjustments which were made by respondents, and the adjustments due to administration salaries not charged to branches, both of these having been previously explained. The third column shows the adjusted total salaries as taken into respondents' costs, and the remaining columns show the distribution of these salaries to species, etc.

(b) The details in support of schedule No. 6 may be found on the so-called "Questionnaire" forms identified as Government Exhibit No. 50. The "Questionnaire" forms are arranged so that a separate column may be used for each owner. Their names are shown in the headings of the columns and, in spaces provided thereunder, information has been shown as to their "Government No.", whether "Owner" or "Employee", the "Class of Worker", the "Number of Months Worked", the "Amount of Compensation", the "Percent of Time Devoted To", the commission or other business, and the "Distribution of Time Devoted to the Commission Business" as between "Selling", "Buying", "Yarding", "Office Work", "Business Getting", and "General Supervision".

(c) A separate "Questionnaire" form was provided for each firm. The Government filled in all of the information concerning the identity and compensation of each owner and employee. These forms were then turned over to me to have the "Percent of Time Devoted To" the commission and other business, and the "Distribution of Time Devoted to the Commission Business" ascertained from each firm and inserted. After this had been done, these forms were returned to the Government auditors who applied the distribution percentages to the amounts of compensation and thus arrived at the salary distribution to species and functions separately for each owner and employee and in total for all.

(d) At this point, these "Questionnaire" forms were again turned over to me and I inserted the amounts of adjustments arising out of the appraisal of owners' salaries, and distributed these adjustments to species and functions on the same percentages as were used for the respective owners originally. These "Questionnaires", therefore,

were made to indicate the salaries and their distributions as used both by the Government and the respondents, respectively.

(e) In the preparation of these "Questionnaires", the object of showing the "percent of Time Devoted To" the commission and other business was to exclude from the salary element of costs for each firm the proportion, if any, which represented time devoted to the loan or any other outside business, or to the clearing of accounts of other commission firms, or to selling, buying or yarding of other firms' livestock. Then, in the case of commission firms receiving such service, the amount paid for it was included on their "Questionnaire", and distributed to species and functions. In this way, the salaries as taken into the costs of each firm represented only that part of the owners and employees services which were devoted to the handling of that firm's commission business.

(f) The "Distribution of Time Devoted to the Commission Business" as between species and functions was arrived at on the basis of estimates made by owners and employees, except in the case of country trips which was based on the in-and-out register maintained in the Chicago Live Stock Exchange office. Inasmuch as salesmen, yardmen and other outside workers specialize as to species, that part of their distribution was actual, and since these classes of workers are mainly assigned to but one function, that part of the distribution was also practically actual. The selling, buying, yarding and business getting salaries, the distribu- [fol. 1479] tion of which was almost entirely actual, represent approximately two-thirds of the aggregate costs. Similarly, the office workers, who to a large extent specialize in certain functions, furnished me with the distribution of their time to functions, such as the preparation of account sales, account purchases, bookkeeping, circulars, etc., it being impractical to estimate the distribution of office workers' time as between the various species.

(g) It will be noted that the distribution of salaries as just explained, is limited to the distribution as between the various species, or between the various functions, and has not been carried to the point where distribution becomes necessary as between the various modes of arrival, such as "Straight Cars—Single Ownership", "Mixed Cars—

Plural Ownership", "Drive-ins", etc. The frequent interchange and joint use of time as devoted to the various modes of arrival by yard workers made it impracticable to estimate the amount of time devoted to each mode of arrival for any considerable period of time past, therefore, this distribution had to be accomplished by the use of a time-study which will be hereinafter described. Similarly, the frequent interchange and joint use of time as devoted to species and to modes of arrival by office workers made it impracticable to estimate the amount of time devoted to each species and mode of arrival for any considerable time past and so this distribution was made on the basis of statistics which will also be hereinafter described.

(h) At this point attention is called to the fact that the respondents' and the Government's distributions of salaries of owners and employees are only in agreement to the extent that they could be distributed "directly" to species and to functions as indicated on the so-called "Questionnaires" and on schedule No. 6. Later on, and in connection with its cost-study, the Government made further distributions of "indirect" salaries to species, and of all salaries, to modes of arrival, and in so doing employed statistical bases with which the respondents cannot agree. The differing results are highly important. I shall now explain the methods and bases used by the respondents in distributing the several classes of salaries to species and to modes of arrival and further on in this testimony I shall compare these methods, and the results, with those used by the Government.

10. Time-Study of Yard Operations

(a) A time-study of yard operations, covering the activities of the salesmen, buyers, yardmen and other yard workers of nineteen representative commission firms, was made for the four weeks period from September 19th to October 16th, 1932. The commission firms selected to participate in this time-study were chosen because they were representative as to volume of business handled (large, small and medium), as to species handled, as to various locations in the yards in relation to the unloading docks and scales, and as to the general character of the organizations and business and the ability and willingness of

owners and employees to keep correct time records according to instructions.

(b) The firms selected are listed at the bottom of schedule No. 10 where the volume of business handled by each and by all these firms is shown by species and in total for the entire year and for the time-study period. It will be noted that these 19 firms handled:

from 3,130 to 149,778 head of cattle & calves,
from 2,806 to 129,004 head of hogs, and
from 827 to 515,982 head of sheep

during the year 1932, covering a wide range of volume, and yet their combined volume represented 45.83% of all cattle and calves, 39.77% of all hogs, and 36.71% of all the sheep handled by all the respondent firms. During the time-study period of four weeks, the time-study firms handled [fol. 1480] 276,129 head of livestock, or 7.59% of their entire 1932 volume. It will also be noted by comparison with statistics shown on Schedule No. 22, that the percents for each species representing the relative number of head arriving as "Straight Cars—Single Ownership", "Mixed Cars—Plural Ownership", "Drive-ins", etc., during the entire year 1932 are remarkably close to those for the time-study period. Therefore, as to species, volume, and character of volume, there is little doubt that the time-study period and firms selected were thoroughly representative.

(c) The mechanics of the time-study involved the use of a morning and afternoon time-card, Exhibit No. 13, a daily time report, Exhibit No. 14, a daily volume report, Exhibit No. 15, and summaries, Exhibit No. 16. The time-cards were kept by the individual salesmen, yardmen and other yard workers. The daily time-reports which covered the in-and-out time of each yard worker, were kept by the office man of the respective firms. The daily volume-reports, showing the number of head of each species under each mode of arrival sold during the day, were also kept by the office man of the respective firms. The summaries, to which the time-cards, time-reports, and volume-reports were posted, were kept by my own employees. Before posting to summaries, the time reported on time-cards by each yard worker was checked against the in-and-out time of that worker as shown on the daily time-report, so that all of the time of time-study workers was accounted for.

(d) The time-cards used provided a separate column for each of the classes of work performed regularly or otherwise by yard workers. Office work and country trips were also provided for although merely for the purpose of insuring a check on the total time and the inclusion of all yard time. In the columns provided for "receiving", "sorting and grading", "showing and selling" and "weighing", spaces were provided in which the time was reported as between modes of arrival. In the columns for other classes of work, no sub-division was required. Both the morning and afternoon time-cards were blocked out so as to provide for a separate reporting for each hour of the day, the object being to compel the recording of time at frequent intervals in order to insure greater accuracy. These time-cards were carried by the workers in the yards and in order to insure the carrying out of instructions as to the proper recording of time and the hourly recording of time, two of my own employees who were familiar with the yards and the workers, spent a very large part of their own time out in the yards circulating among the workers and supervising the time-recording.

(e) When the daily time-reports and daily volume-reports were prepared by the office man for the respective time-study firms and the time-cards were turned in to them by their respective yard workers, the office man made a check to determine that the time as reported by each yard worker agreed with the time-report, and that the modes of arrival to which time had been charged by the yard workers were in agreement with the volume-report. When these records were forwarded to my office, a similar check was made from an accounting standpoint and where errors were apparent, the yard workers or office men were interviewed, and corrections were made, if necessary.

(f) In the distribution of yard workers salaries, as previously explained, we ascertained the amount of salaries chargeable to each species and to each function, therefore, in summarizing the time-study results for use in connection with the further distribution of such salaries as between modes of arrival, it was necessary that the time-study summary also observe the "species" and "functional" classifications. As a means of accomplishing this, separate summary sheets were used for "salesmen and buyers" and for "yardmen" and, when the time-study results were further

summarized as shown on schedule No. 10, the interchange or overlapping of functions as between these two classes of workers was observed by setting up one summary for "selling and buying" and another for "yarding". In this way, the showing and selling, and buying, performed by [fol. 1481] yardmen was included in the summary for "selling and buying" and the receiving and weighing performed by salesmen was included in the summary for "yarding".

(g) On the summary of time-study results, schedule No. 10, under both "selling and buying" and "yarding", it will be noted that the direct time-charges in minutes have been shown first and sub-totaled, then the "stand-by" time has been distributed to the several modes of arrival on the basis of the time directly assigned. And, under "yarding" the so-called "yarding" time has been distributed to modes of arrival on the basis of the relative number of head handled. Then the total minutes have been shown, as well as the number of head handled, and the number of minutes per head have been calculated therefrom. On the last line, the percent of time which the minutes-per-head for each mode of arrival bears to the total minutes-per-head for each species, has been shown. These percents merely represent the division of time on a one-head basis, and were not used for any other purpose. The figures used as a weight-factor for distribution purposes were those indicating the number of minutes-per-head.

(h) Before proceeding, I would like to explain the class of time called "stand-by". There are two classes of waiting-time encountered in yard operations, both of which occur when salesmen, buyers, or yardmen reach a situation where, for one unavoidable reason or another, they cannot proceed with their duties. This occurs, for example, when a yardman is waiting for a shipment to arrive, or to be delivered to him at the unloading dock and it also occurs when a salesman is waiting for a buyer. Under one class of waiting-time, the worker knows the particular consignment or mode of arrival which causes the waiting-time and, in such a case his time was charged directly to that particular mode of arrival. Under the other class of waiting-time, the worker does not know the particular consignment or mode of arrival which causes the waiting-time and, in that case his time was charged to "stand-by".

(i) I would also like to explain that the class of time called "yarding" on the time-cards covers the cleaning of pens, watering, feeding, or other similar work in the yards, usually performed by yardmen but sometimes by salesmen also.

(j) As a means of refining the results of the time-study so as to indicate for each function of service performed, the average number of minutes-per-head devoted to one mode of arrival as compared with another, sub-calculations have been made as follows:

Function	Straight S/O	Straight P/O	Mixed S/O	Mixed P/O	Drive-Ins	Seconds
Cattle & Calves						
Receiving	1.989	1.895	1.966	2.074	3.450	0.346
Sorting & Grading	1.508	2.172	1.884	1.851	1.626	0.683
Showing & Selling	2.660	2.603	3.123	3.620	4.738	3.311
Weighing	2.064	2.350	2.524	2.458	3.628	1.872
Stand-By	2.207	2.420	2.545	2.679	3.612	1.655
Yarding	0.761	0.761	0.762	0.761	0.761	0.761
Total	11.189	12.201	12.804	13.443	17.815	8.628

[fol. 1482]

Function	Straight S/O	Straight P/O	Mixed S/O	Mixed P/O	Drive-Ins	Seconds
Hogs						
Receiving	0.679	0.648	0.864	0.777	1.200	0.114
Sorting & Grading	0.423	0.618	0.678	0.783	0.600	0.159
Showing & Selling	0.819	1.077	0.968	1.256	1.537	1.192
Weighing	0.602	0.734	0.788	0.952	1.019	0.574
Stand-By	0.889	1.078	1.162	1.324	1.536	0.694
Yarding	0.211	0.211	0.211	0.211	0.212	0.211
Total	3.623	4.366	4.671	5.303	6.104	2.944
Sheep						
Receiving	0.102	0.127	0.176	0.213	0.517	0.143
Sorting & Grading	0.220	0.262	0.279	0.329	0.472	0.174
Showing & Selling	0.279	0.408	0.472	0.582	0.734	0.686
Weighing	0.162	0.282	0.240	0.389	0.530	0.386
Stand-By	0.204	0.303	0.343	0.421	0.588	0.385
Yarding	0.063	0.063	0.063	0.063	0.063	0.063
Total	1.030	1.445	1.573	1.997	2.904	1.777

11. Respondents' Distribution of Selling and Yarding Salaries as Between Modes of Arrival

(a) The time-study results, as just explained, were used as a weight-factor in the distribution of selling and yarding salaries for the purpose of weighting the volume so as to establish proper relationships between the several modes

of arrival as influenced by the relative unit-of-time devoted to each. In other words, the number of head of each species actually handled by each firm during the year 1932 under each mode of arrival was multiplied by the respective time-study minutes-per-head, which produced the "head-minutes" or "weighted number of head" for each mode of arrival for each firm. This was done separately for "selling" and for "yarding" so that each of these two classes of salaries would reflect its own time-study weight-factor and be distributed independently of the other.

(b) Attention is here directed to the fact that the time-study minutes-per-head have been used as differentials rather than specific time measurements, and that they have been applied as units-of-time rather than units-of-cost. This distinction explains and justifies their application to all firms and to the volume handled during the entire year. Whether one firm handled more or less volume than another, or whether the average four-weeks' volume during the year is more or less than that handled during the four-weeks time-study period, or whether the volume is high or low, or is constant or fluctuating, makes no difference whatever under the method used in applying the time-study results.

(c) The distribution of all salaries and expenses is shown on work-sheets, Exhibit No. 17. However, at this time, I shall confine my explanations to the distribution of selling and yarding salaries because no other classes of salaries were influenced by time-study weight-factors. The distribution of these two classes of salaries will be found in the upper part of these work-sheets. At the top of the left-hand column you will find that I have shown the "Actual Num-[fol. 1483] ber of Head", as taken from schedule No. 13. "Time-study Minutes (S&B)" and "Time-study Minutes (YDG)", as taken from schedule No. 10. Then you will find that I have applied the actual number of head to these time-study weight-factors, respectively, and, as previously explained, arrived at the "Weighted Number of Head (S&B)" and the "Weighted Number of Head (YDG)". Based on the "Weighted Number of Head" for each mode of arrival, I have shown the percents to sub-total for each species, and by applying these percents to the total "selling salaries" and "yarding salaries", respectively, for each spe-

cies (as taken from schedule No. 6) these salaries were distributed to modes of arrival.

(d) In this way, the distribution of selling and yarding salaries, which represent about two-thirds of the total costs, was accomplished as between modes of arrival on the basis of actual performance.

12. Respondents' Distribution of Credit for Country Selling and Buying Salaries

(a) An explanation has already been given as to the purpose of this credit and as to the method employed in arriving at the amounts as are shown for this class of service on schedule No. 7. After having allocated these credits to species in the manner indicated, further distribution was made on the work-sheets identified as Exhibit No. 17 to modes of arrival on the basis of relative carlots. There were only 303 carlots of livestock sold or bought in the country by respondents during the year 1932, and this represents but 2/10th of one percent of the total volume for that year.

13. Respondents' Distribution of Office Salaries as Between Modes of Arrival

(a) As previously explained, office salaries were distributed to functions, such as preparing "Account Sales", "Account Purchases", and "bookkeeping, Etc." on the so-called "Questionnaire" forms and then summarized on schedule No. 8. At that point, the distribution could not be carried to species or to the modes of arrival thereunder because the frequent interchange and joint use of time rendered such a distribution impracticable either on the basis of estimates or a time-study, therefore, some statistical basis had to be employed for that purpose.

(b) The determination as to what statistical basis should be used for this purpose did not permit of the free use of judgement in view of the fact that there was a limited number of bases available from which to choose. We had statistics as to the "number of head", "number of cars", "number of decklots", "number of drafts", "number of owners", "number of account sales", and "amount of commissions". In this case, as in all cost accounting practice,

no basis which might be employed could be expected to operate perfectly throughout, and so the selection of a proper basis was made by selecting from those available the one which resulted in the least amount of inequality. As a cost-study, such as the one under consideration here, involves departmental or functional classifications where different statistical bases of apportionment must be used, it is customary to select bases of apportionment so that these slight inequalities will operate to offset each other.

(c) In the selection of a basis for the distribution to species and to modes of arrival of that part of office salaries devoted to the preparation of "account sales", I chose the "number of drafts" as more nearly representing the unit of work performed than any other basis available. It is a well known fact, however, and testimony in this case has so indicated, that the preparation of account sales for certain modes of arrival involve the performance of cer- [fol. 1484] tain kinds and quantities of work which do not attach to other modes of arrival and, to that extent, the inequities which I have just mentioned have opportunity to express themselves. This applied more particularly to the preparation of account sales covering "seconds" where simplicity prevails, but in the case of "seconds" the bases employed in other departments of the costs have undoubtedly operated to fully offset any possible over-charge. Furthermore, the weight which the cost in any one department so affected bears to the total costs, must be considered as indicating the relative importance of such inequalities, if any, which may exist.

(d) In the case of "seconds" the salary expense charged against "account sales" amounts to only 7% of the total cost of handling "seconds", which indicates that any possible inequality in the cost of this item has but little importance and could not affect the total unit-cost.

(e) As a further indication that the basis of "drafts" used in the distribution of "Office Salaries—Account Sales" to modes of arrival, particularly "seconds", operates fairly in spite of the lesser amount of work per account sale, the following records for 1932 are noted:

In the Case Of	No. of Acct. Sales	No. of Cars	No. of Acct. Sales Per Car
Cattle & Calves			
Straight Cars—Single Ownership	32,919	46,016	.72
Seconds	27,054	9,747	2.78
Hogs			
Straight Cars—Single Ownership	13,470	14,400	.94
Seconds	4,152	1,648	2.52
Sheep			
Straight Cars—Single Ownership	5,912	7,511	.77
Seconds	901	221	4.08

In the Case Of	No. of Drafts	No. of Acct. Sales	No. of Drafts Per Acct. Sale
Cattle & Calves			
Straight Cars—Single Ownership	169,984	32,919	5.17
Seconds	57,182	27,064	2.11
Hogs			
Straight Cars—Single Ownership	55,101	13,470	4.09
Seconds	6,273	4,152	1.51
Sheep			
Straight Cars—Single Ownership	24,748	5,912	4.19
Seconds	1,634	901	1.80

The comparison has been made with "Straight Cars—Single Ownership" because the amount of work involved in the preparation of account sales for this mode of arrival is less than any other class of business, except "seconds". However, it will be noted that from 4 to 6 times as many account sales per-car were prepared for "seconds" while this class of business had less than one-half as many drafts [fol. 1485] per account sale. In other words, even though the units of work (which admittedly involve less work per unit) were 4 to 6 times as great, "seconds" were charged with less than one-half the normal proportion of expense which attached to the work.

(f) In the case of office salaries devoted to the preparation of account purchases, distribution was made as between species on the basis of the "number of drafts" and for the same reason given in the case of account sales.

(g) In the case of "other—Office Salaries" the work performed is of a miscellaneous and general character which is not directly influenced by the number of drafts, but rather by the general business situation and volume. The "number of carlots" seems to be the most acceptable yard-stick for this class of work and this is the basis which was used and, although here again some inequalities may possibly

occur as between modes of arrival, they tend to offset others just referred to.

(h) In the case of "drive-ins" and "seconds", the business is not handled in carlots but, for cost accounting purposes it is necessary to calculate the equivalent number of carlots in order to provide a common denominator. The calculation for these two classes of business was based on the rail-line carlot experience, because the number of head per consignment in the case of "drive-ins" and "seconds" is very much smaller than in the case of rail-line shipments, the number of cars thus calculated does not fully represent the amount of miscellaneous office work involved on account of these two classes of business. However, the item of "other office salaries" amounts to only 6.2% of the total expense, from which it may be seen that any possible inequality which might exist would be unimportant, and offsetting.

14. Respondents' Distribution of Business Getting Salaries as Between Modes of Arrival

(a) Business getting salaries were also distributed on the so-called "Questionnarie" forms as between "country trips" and "circulars, Correspondence, etc." and as between species whenever possible. A summary of these salaries may be found on schedule No. 6. As previously explained, the amount of salaries charged to "country trips" was calculated from the actual amount of time spent in the country as shown by the in-and-out register in the Exchange office. The distribution to species was estimated by the individual owners or employees who made the trips. The amount of salaries charged on the "Questionnaires" to "circulars, correspondence, etc." was estimated by those concerned and so was the distribution to species, whenever possible.

(b) The further distribution of "business getting" salaries to modes of arrival was made on the basis of the relative number of carlots as indicated on the work-sheets, Exhibit No. 17. Business getting—element "A"—relates to "circulars, correspondence, etc." and element "B" relates to "country trips". It will be noted that no business getting salaries have been charged to "seconds", and this was

because no business-getting effort is devoted to this class of business, except perhaps in the daily contacts which take place in the yards incidental to other activities.

(c) At this point, I would like to explain that in the case of firm No. 31—Fred Freeman, a charge appears against "business getting—country trips" although the volume indicates that Mr. Freeman's business was confined to "seconds". This was not discovered until the cost figures were [fol. 1486] almost completed, and an investigation of the situation brought out the following explanation. Mr. Freeman, primarily, is an employee of firm No. 81—Rosenbaum Bros. & Co., but, secondarily, sells "seconds" on his own account. In drawing off the record of his country trips from the Exchange register, his time in the country was inadvertently charged against his own operations instead of against Rosenbaum Bros. & Co., for whom the trips were actually made, and in the natural course of events the charge was made against "seconds". At the time this situation was discovered, the cost figures were almost completed and in view of the fact that the charge amounted to only $12.00 under "cattle & calves" and $12.00 under "hogs", an upset of all the cost figures was avoided by transferring these amounts to the proper class of service on the cost sheets for firm 31, although the transfer, to be absolutely correct, should have been made from firm 31 to firm 81. However, the transfer, as it was made, fully corrected the situation as to mode of arrival which is the important consideration, and did not, in any way, disturb the accuracy of the total costs for each of these firms.

(d) The use of the carlot basis in the distribution of business getting salaries was selected because business getting trips and other activities are primarily intended to attract volume, particularly carload business and time and effort was devoted accordingly. The effort to secure "drive-in" business is largely incidental. It has previously been explained that the carlot basis favors "drive-ins" because the method of calculating equivalent carlots has a tendency to reduce the number of units against which distribution is made to this class of business, however, in the case of business getting salaries this is as it should be in view of the fact that a lesser effort is put forth.

15. Respondents' Distribution of Administration Salaries to Species and Modes of Arrival

(a) Administration salaries cover the time devoted to general supervision. A summary of the amounts of such salaries may be found on schedule No. 6. The amount charged to this function is relatively small because, as a rule, the personnel is highly specialized as to species and functions and time devoted to supervision can be allocated directly. On the other hand, and almost without exception, even the owners are workers—usually salesmen.

(b) When the time devoted to general supervision could be allocated to species, the salary distribution was so shown on schedule No. 6. In other cases, such salaries were distributed to species and to modes of arrival by use of the work-sheets, Exhibit No. 17, and on the basis of the relative number of carlots.

(c) The carlot basis is the best for this purpose because it more nearly expresses the relationship of supervision to the business in general. The explanation given in this respect under "other office salaries" applies also to administration salaries. Administration salaries amount to only 1.3% of the total costs.

16. Expenses and Accruals

(a) The total expenses and accruals of each of the respondent firms are summarized on schedule No. 8. The figures shown in the first column on this schedule were taken from Government Exhibit No. 49 at pages 49 to 51. These figures represent the result of audits made by the Government accountants, to and from which certain additions or deductions were made as were also indicated on Government Exhibit No. 49 at pages 55 to 60. To the Government's figures as shown in the first column on my schedule No. 8, I have added an amount of $2,722.00 which will be found opposite firm No. 90 in the second column on this schedule [fol. 1487] and which has already been explained. In the third column of schedule No. 8, the total expenses for each firm as taken into respondents' costs (representing the sum of columns 1 and 2) are shown, and the distribution of these amounts have been indicated in the remaining columns on this schedule.

(b) The distribution of "direct" expenses to functions and to species was also taken from Government Exhibit No. 49 at pages 118 to 132, except as affected by the amount shown in column 2 of schedule No. 8 and except that the "horse and saddle" expense which was shown by the Government under yarding expense has been shown by respondents under selling expense in view of the fact that horses are not used in yarding but in selling service.

(c) At this point, attention is called to the fact that the Government's distributions of expenses has only been accepted insofar as they have been able to make them directly to functions and to species. The distribution of "indirect" expenses to species, and the further distribution of both "direct" and "indirect" expenses made by the Government later on in its cost studies as between modes of arrival were not accepted because the respondents do not agree with the statistical bases used by the Government for those purposes. I shall now explain the methods and bases employed by respondents in distributing the several classes of expenses (as shown on work-sheets, Exhibit No. 17) and further on in this testimony I shall compare these methods and the results with those used by the Government.

17. Respondents' Distribution of Selling Expenses

(a) Selling expenses were distributed by respondents as between modes of arrival on the same basis as was used for the distribution of selling salaries, namely, the "weighted number of head". A full explanation of this basis has already been given. Selling expenses represent the use by salesmen of horses and saddle in the cattle yards, therefore, it is obviously correct to distribute this expense to modes of arrival according to the relative amount of time devoted by salesmen to each.

18. Respondents' Distribution of Yarding Expenses

(a) "Indirect" yarding expenses were distributed by respondents to species, and both "direct" and "indirect" yarding expenses were distributed as between modes of arrival on the same basis as was used for the distribution of yarding salaries, namely, the "weighted number of head". The manner in which this basis was determined has previously been explained. As in the case of selling expenses,

and in accordance with universal practice in cost-accounting, miscellaneous expenses attaching to services rendered should be so distributed as to follow the labor cost of the service performed.

19. Respondents' Distribution of Office Expenses

(a) Except in the case of two firms who specialize in but one species, office expenses could not be allocated "directly". The "indirect" office expenses, as in the case of selling and yarding expenses, were distributed to species, and both the "direct" and "indirect" office expenses were distributed as between modes of arrival by respondents on the basis of distributed office salaries so that the expense would follow the office labor distribution for reasons already given.

[fol. 1488] 20. Respondents' Distribution of Business Getting Expenses

(a) Since there are two classes of activities in business getting, namely, "country trips" and "circulars, correspondence, etc.," and in order that their distribution to species (and later to modes of arrival) might follow the labor costs where the expense was joined with it, these two classes of expense had to be separated. Schedule No. 9 shows how this separation was accomplished by the respondents and how the "country trip" part of these expenses were distributed as between species.

(b) The figures shown in the first two groups of columns on this schedule, namely, those identified as "Element A" and "Element B" were taken from Government Exhibit No. 49 at pages 79 to 81, however, as in the case of other classes of expense, the respondents have not accepted the Government's distribution of "indirect" expenses because they are not in agreement with the basis used by the Government. Therefore, in the next group of columns the "Element B" indirect expenses have been redistributed to species on the basis of distributed business-getting salaries for country trips. Then the "Element B" direct expenses and the distributed indirect expenses were brought together so as to indicate the total of all "Element B" expenses separately for each species. As completed, schedule

No. 9 shows "Element A" expenses (which are "indirect") and "Element B" expenses (which are "direct") as distributed to species.

(c) In the distribution of "Element A" expenses to species, the basis of relative carlots was used. These expenses cover—advertising $164,717, and entertaining $11,776. The "carlot" basis of distribution was used because it expresses the object of business getting, namely, volume. The practice of distributing expenses on the same basis as salaries was not followed in this particular instance because almost all of this expense is for advertising which has no relationship to labor effort.

(d) The further distribution of both "Element A" and "Element B" expenses as between modes of arrival was made on the basis of relative carlots because the object of all business getting activities is to maintain or increase volume, and both effort and expense are directed accordingly.

21. Respondents' Distribution of Administration and General Expenses

(a) The administration and general expenses are almost entirely "indirect" and, as previously explained, the respondents do not agree with the basis which the Government has employed for their distribution. The respondents have, therefore, redistributed these expenses, as indicated on the work-sheets, Exhibit No. —, to species and as between modes of arrival on the basis of the relative number of carlots. The classification of these expenses indicate their general character and it is believed that "carlots" more nearly expresses the relationship between supervision and the business in general. This is the same basis which was used to distribute administration salaries.

[fol. 1489] 22. Respondents' Distribution of Risk Expense

(a) More than 80% of the risk expenses are "indirect" and are general in their relation to the business. The remaining 20% represent mortgage and theft insurance premiums which are paid for on a per-car basis and were so allocated to species by the Government. The respondents have also distributed the "indirect" risk expenses to species and as between modes of arrival on a per-car basis because the

analysis of risk expeness as found at pages 91 to 93 of Government Exhibit No. 49 shows that more than two-thirds of such expenses relate to the business in general which is influenced by volume.

23. Respondents' Distribution of Interest on Invested Capital

(a) The item of interest on invested capital was distributed as between modes of arrival, by both the Government and the respondents on the basis of the relative number of carlots.

24. Differences Between the Government's and the Respondents' Methods of Distributing Salaries and Expenses

(a) Throughout my explanations of methods employed in the distribution of the various classes of salaries and expenses, attention has been called to differences between the methods used by the Government and those used by the respondents. These differences, and their effect upon the costs, will now be explained. In connection with these explanations, the amount of the Government's costs and the respondents' costs for each class of salary or expense will be given as a means of indicating the importance of these differences. However, in order that salary appraisal adjustments, etc., made by respondents, will have no influence whatever in these comparisons, percentages will be used. And, whenever these percentages are applied to costs in order to indicate the extent of errors, the application will be made to the Government's cost figures, because those figures contain the errors.

25. Differences Between the Government's and the Respondents' Distribution of "Selling Salaries" and "Selling Expense"

(a) Selling salaries were distributed by the Government on the basis of "Head and Drafts" combined, and selling expenses (which were included by the Government in "yarding" expenses) were distributed by the Government on the basis of "Drafts" only. As previously explained, the respondents made an actual time-study of selling activities in the yards and used the results as a weight-factor in arriving at the basis of "Weighted Number of Head" which was used by the respondents in distributing both selling salaries

and selling expenses to modes of arrival. The factors and the percentages used by the Government and the respondents, respectively, are shown on schedule No. 22, and in order that the effect on Government costs caused by the use of these erroneous methods of distribution may be clearly indicated and measured, I will now compare the percentages used and show the amounts involved:

[fol. 1490] Selling Salaries

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $753,885—Respondents $973,960)				
Cattle & Calves—				
Straight Cars—Single Ownership..	46.33%	45.15		1.18%
Straight Cars—Plural Ownership..	17.78	16.11		1.67
Mixed Cars—Single Ownership...	3.37	3.75	.38%	
Mixed Cars—Plural Ownership...	6.62	7.12	.50	
Drive-Ins.....	15.72	18.63	2.91	
Seconds.....	10.18	9.24		.94
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $313,460—Respondents $357,982)				
Hogs—				
Straight Cars—Single Ownership..	33.00%	25.92%		7.08%
Straight Cars—Plural Ownership..	25.16	25.44	.25%	
Mixed Cars—Single Ownership...	4.94	4.86		.08
Mixed Cars—Plural Ownership...	10.50	12.21	1.71	
Drive-Ins.....	22.79	28.26	5.47	
Seconds.....	3.61	3.34		.27
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $76,741—Respondents $84,449)				
Sheep—				
Straight Cars—Single Ownership..	70.58%	55.59%		14.99%
Straight Cars—Plural Ownership..	13.63	16.32	2.69%	
Mixed Cars—Single Ownership...	1.98	2.79	.81	
Mixed Cars—Plural Ownership...	2.84	4.34	1.50	
Drive-Ins.....	9.13	18.00	8.87	
Seconds.....	1.84	2.96	1.12	
Total.....	100.00	100.00	.....	.....

Selling Expenses

(Total costs are—Government $17,760—Respondents $17,760)				
Cattle & Calves—				
Straight Cars—Single Ownership..	29.10%	45.15%	16.05%	
Straight Cars—Plural Ownership..	23.34	16.11		7.23%
Mixed Cars—Single Ownership...	3.14	3.75	.61	
Mixed Cars—Plural Ownership...	9.34	7.12		2.22
Drive-Ins.....	25.30	18.63		6.67
Seconds.....	9.78	9.24		.54
Total.....	100.00	100.00	.....	.....

(b) It will be noted that there are differences of from .08% to 14.99% and by the application of these percents to the Government's total costs for the respective species, it will be found that the differences between the actual distribution as used by respondents and the erroneous distribution used by the Government amount to from $96 to $22,038 affecting each of the modes of arrival, some of which are undercharged and others are overcharged.

[fol. 1491] 26. Differences Between the Government's and the Respondents' Distribution of "Yarding Salaries" and "Yarding Expenses"

(a) Both yarding salaries and yarding expenses were distributed by the Government on the basis of "drafts", whereas the respondents made an actual time-study of yarding activities and used the results as a weight-factor in arriving at the basis of "Weighted Number of Head" which was used by the respondents in distributing both yarding salaries and yarding expenses. The factors and the percentages used by the Government and by the respondents, respectively, are shown on schedule No. 22, and in order that the effect on Government costs caused by the use of an erroneous method of distribution may be clearly indicated, I will now compare the percentages used and show the amounts involved:

Yarding Salaries and Yarding Expenses

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $206,054—Respondents $208,109)				
Cattle & Calves—				
Straight Cars—Single Ownership	29.10%	47.41%	18.31%	
Straight Cars—Plural Ownership	23.34	16.76		6.58%
Mixed Cars—Single Ownership	3.14	3.48	.34	
Mixed Cars—Plural Ownership	9.34	6.18		3.16
Drive-Ins	25.30	20.39		4.91
Seconds	9.78	5.78		4.00
Total	100.00	100.00	.....	.....
(Total costs are—Government $125,061—Respondents $128,114)				

Yarding Salaries and Yarding Expenses—Continued

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
Hogs—				
Straight Cars—Single Ownership	17.91%	28.22%	10.31%	
Straight Cars—Plural Ownership	25.17	23.26		1.91%
Mixed Cars—Single Ownership	4.54	5.28	.74	
Mixed Cars—Plural Ownership	13.97	11.73		2.24
Drive-Ins	36.37	29.75		6.62
Seconds	2.04	1.76		.28
Total	100.00	100.00	.....	.....
(Total costs are—Government $20,192—Respondents $21,716)				
Sheep—				
Straight Cars—Single Ownership	32.55%	58.92%	26.37%	
Straight Cars—Plural Ownership	18.89	13.63		5.26%
Mixed Cars—Single Ownership	3.82	1.85		1.97
Mixed Cars—Plural Ownership	10.57	3.64		6.93
Drive-Ins	32.02	19.88		12.14
Seconds	2.15	2.08		.07
Total	100.00	100.00	.....	.....

(b) It will be noted that there are differences of from .07% to 26.37% and by the application of these percentages to the Government's total costs for the respective species, it will be seen that the differences between the actual distribution as used by respondents and the erroneous distribution used by the Government amount to from $14.92 to $37,821.50 and affect each of the modes of arrival, some of which are undercharged and others are overcharged.

[fol. 1492] 27. Differences Between the Government's and the Respondents' Distribution of "Office Salaries—Account Sales"

(a) These salaries were distributed by the Government on the basis of "Account Sales—Owners—Drafts" and by the respondents on the basis of "Drafts" only. The combination of three different factors, such as account sales, owners and drafts, is a mathematical fallacy and the product has no meaning whatsoever. Each of these factors carry different weight or influence and their combination therefore destroys whatever relationship they may have expressed individually as between modes of arrival. The result of such a misuse of figures cannot be relied upon even from the standpoint of constancy. On the other hand, the basis of "Drafts" alone as used by respondents is unadul-

terated and more than any other available basis measures the amount of work in relation to species and modes of arrival. A more complete explanation of this basis, especially in its application to "seconds" has been previously given. In order that the erroneous effect on Government's costs caused by the use of the basis "Account Sales—Owners—Drafts" may be indicated, the percentages used by the Government and the respondents will now be given in comparison:

Office Salaries—Account Sales

In the Case of	The Government Used	The Respondents Used	Resulting in Government Costs Being Understated	Resulting in Government Costs Being Overstated
(Total costs are—Government $92,760—Respondents $96,037)				
Cattle & Calves—				
Straight Cars—Single Ownership..	21.57%	29.10%	7.53%	
Straight Cars—Plural Ownership..	23.95	23.34		.61%
Mixed Cars—Single Ownership...	2.10	3.14	1.04	
Mixed Cars—Plural Ownership...	14.04	9.34		4.70
Drive-Ins.....	28.16	25.30		2.86
Seconds.....	10.18	9.78		.40
Total.....	100.00	100.00	.....	.....
(Totals costs are—Government $51,770—Respondents $51,657)				
Hogs—				
Straight Cars—Single Ownership..	12.46%	17.91%	5.45%	
Straight Cars—Plural Ownership..	29.64	25.17		4.47%
Mixed Cars—Single Ownership...	2.63	4.54	1.91	
Mixed Cars—Plural Ownership...	17.43	13.97		3.46
Drive-Ins.....	35.63	36.37	.74	
Seconds.....	2.21	2.04		.17
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $13,470—Respondents $12,703)				
Sheep—				
Straight Cars—Single Ownership..	26.97%	32.55%	5.58%	
Straight Cars—Plural Ownership..	20.04	18.89		1.15%
Mixed Cars—Single Ownership...	2.76	3.82	1.06	
Mixed Cars—Plural Ownership...	13.07	10.57		2.50
Drive-Ins.....	34.58	32.02		2.56
Seconds.....	2.58	2.15		.43
Total.....	100.00	100.00	.....	.....

[fol. 1493] (b) From this comparison, it will be seen that differences of from .17% to 7.53% exist, and that by the application of these percentages to the Government's total costs for the respective species, it will be noted that these differences amount to from $57.92 to $6,984.83 and affect each of the modes of arrival, some of which were overcharged and others were undercharged.

28. Differences Between the Government's and the Respondents' Distribution of "Office Salaries—Other"

(a) These expenses were distributed by the Government on the basis of "Account Sales—Owners—Drafts" and by the respondents on the basis of relative "carlots". The basis used by the Government has already been criticized in connection with "Office Salaries—Account Sales". Further comments are, therefore, unnecessary. However, the percentages used by the Government and by the respondents, respectively, will be shown in comparison in order that the extent to which the Government costs were affected by their erroneous distribution, may be clearly indicated.

Office Salaries—Other

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $110,688—Respondents $117,573)				
Cattle & Calves—				
Straight Cars—Single Ownership..	21.57%	53.94%	32.37%	
Straight Cars—Plural Ownership..	23.95	15.25		8.70%
Mixed Cars—Single Ownership...	2.10	2.37	.27	
Mixed Cars—Plural Ownership...	14.04	3.86		10.18
Drive-Ins	28.16	13.16		15.00
Seconds	10.18	11.42	1.24	
Total	100.00	100.00	.....	.....
(Total costs are—Government $61,834—Respondents $58,820)				
Hogs—				
Straight Cars—Single Ownership..	12.46%	33.09%	20.63%	
Straight Cars—Plural Ownership..	29.64	25.74		3.90%
Mixed Cars—Single Ownership...	2.63	4.64	2.01	
Mixed Cars—Plural Ownership...	17.43	10.02		7.41
Drive-Ins	35.63	22.72		12.91
Seconds	2.21	3.79	1.58	
Total	100.00	100.00	.....	.....
(Total costs are—Government $16,090—Respondents $14,908)				
Sheep—				
Straight Cars—Single Ownership..	26.97%	69.13%	42.16%	
Straight Cars—Plural Ownership..	20.04	14.10		5.94%
Mixed Cars—Single Ownership...	2.76	2.24		.52
Mixed Cars—Plural Ownership...	13.07	3.03		10.04
Drive-Ins	34.58	9.47		25.11
Seconds	2.58	2.03		.55
Total	100.00	100.00	.....	.....

(b) Here again, there are differences in the percentages used by the Government and the respondents of from .27% to 42.16% which, when applied to the total Government costs, indicate differences in amounts of from $83.67 to [fol. 1494] $35,829.70 which affect each of the modes of arrival, some of which have been undercharged and others have been overcharged.

29. Differences Between the Government's and the Respondents' Distribution of "Administration and General Salaries" and "Administration and General Expenses"

(a) Both of these classes of expenses were distributed by the Government on the basis of "Account Sales—Owners—Drafts", and by the respondents on the basis of relative "Carlots". The same criticism made of the Government's use of this basis in connection with other accounts, applies to these accounts also. My comments may be found under "Office Salaries—Account Sales". The different percentages resulting from the Government's use of this erroneous basis of distribution are here shown in order to indicate the effect upon Government costs.

Administration and General Salaries and Expenses

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $57,437—Respondents $72,170)				
Cattle & Calves—				
Straight Cars—Single Ownership..	21.57%	53.94%	32.37%	
Straight Cars—Plural Ownership..	23.95	15.25		8.70%
Mixed Cars—Single Ownership...	2.10	2.37	.27	
Mixed Cars—Plural Ownership...	14.04	3.86		10.18
Drive-Ins.....	28.16	13.16		15.00
Seconds.....	10.18	11.42	1.24	
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $31,067—Respondents $30,387)				
Hogs—				
Straight Cars—Single Ownership..	12.46%	33.09%	20.63%	
Straight Cars—Plural Ownership..	29.64	25.74		3.90%
Mixed Cars—Single Ownership...	2.63	4.64	2.01	
Mixed Cars—Plural Ownership...	17.43	10.02		7.41
Drive-Ins.....	35.63	22.72		12.91
Seconds.....	2.21	3.79	1.58	
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $12,468—Respondents $14,197)				

Administration and General Salaries and Expenses—Continued

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
Sheep—				
Straight Cars—Single Ownership..	26.97%	69.13%	42.16%	
Straight Cars—Plural Ownership..	20.04	14.10		5.94%
Mixed Cars—Single Ownership...	2.76	2.24		.52
Mixed Cars—Plural Ownership...	13.07	3.03		10.04
Drive-Ins.....	34.58	9.47		25.11
Seconds.....	2.58	2.03		.55
Total.....	100.00	100.00	.....	.....

(b) It will be seen that there are differences of from .27% to 42.16% which, when applied to the Government's costs for the respective species indicate that the use of this improper basis of distribution has caused errors of from $64.83 to $18,592.36 which have affected each mode of arrival, some of which have overcharged and others have been undercharged.

[fol. 1495] 30. Differences Between the Government's and the Respondents' Distribution of "Office Expenses"

(a) These expenses were distributed by the Government on the basis of "Account Sales—Owners—Drafts" and by the respondents on the basis of "Distributed Office Salaries". The respondents' exception to the basis used by the Government has been previously stated under "Office Salaries—Account Sales". And, as previously explained, the basis used by respondents follows universal practice in cost-accounting of distributing such expenses as these in accordance with the related salary distribution. The percentages used by the Government and the respondents, respectively are here given in comparison in order that the effect of the erroneous basis used by the Government may be indicated:

Office Expenses

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $113,870—Respondents $117,517)				
Cattle & Calves—				
Straight Cars—Single Ownership	21.57%	41.70%	20.13%	
Straight Cars—Plural Ownership	23.95	19.03		4.92%
Mixed Cars—Single Ownership	2.10	2.81	.71	
Mixed Cars—Plural Ownership	14.04	6.59		7.45
Drive-Ins	28.16	18.40		9.76
Seconds	10.18	11.47	1.29	
Total	100.00	100.00	.....	.....
(Total costs are—Government $63,998—Respondents $59,423)				
Hogs—				
Straight Cars—Single Ownership	12.46%	26.46%	14.00%	
Straight Cars—Plural Ownership	29.64	25.42		4.22%
Mixed Cars—Single Ownership	2.63	4.69	2.06	
Mixed Cars—Plural Ownership	17.43	12.18		5.25
Drive-Ins	35.63	28.42		7.21
Seconds	2.21	2.83	.62	
Total	100.00	100.00	.....	.....
(Total costs are—Government $16,252—Respondents $14,935)				
Sheep—				
Straight Cars—Single Ownership	26.97%	53.12%	26.15%	
Straight Cars—Plural Ownership	20.04	15.75		4.29%
Mixed Cars—Single Ownership	2.76	3.03	.27	
Mixed Cars—Plural Ownership	13.07	6.45		6.62
Drive-Ins	34.58	19.47		15.1[illegible]
Seconds	2.58	2.18		.40
Total	100.00	100.00	.....	.....

(b) In this instance, it will be noted that differences of from .27% to 26.15% exist between the Government's and the respondents' distributions, and the amounts of errors in Government costs caused thereby amount to from $43.88 to $22,922.03 and affect each mode of arrival, some of which have been undercharged and others have been overcharged.

[fol. 1496] 31. Differences Between the Government's and the Respondents' Distribution of Business Getting and Maintaining "Salaries" and "Expenses"

(a) Both business getting salaries and expenses were distributed by the Government on the basis of "Gross Commissions—less Seconds", and by the respondents on the basis of relative "carlots". It is obvious that the use of the

"commission" basis by the Government causes the expense to parallel the dollar-and-cents results, instead of volume, whereas the effort to get low-rate business may be greater than that required for high-rate business. Under the Government's method, the spread between costs and commissions would necessarily remain constant at all times for all classes of business and this results in an improper and misleading statement of practical conditions and costs. Business getting effort is aimed at volume and soliciting time is devoted accordingly, therefore, the respondents have used "carlots" as the proper basis for distributing these costs. The percentages used by the Government and the respondents, respectively, are shown here in order that the extent to which this error affects Government's costs may be indicated:

Business Getting and Maintaining Salaries and Expenses

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $305,270—Respondents $348,633)				
Cattle & Calves—				
Straight Cars—Single Ownership..	57.07%	60.90%	3.83%	
Straight Cars—Plural Ownership...	18.98	17.22		1.76%
Mixed Cars—Single Ownership...	2.86	2.67		.19
Mixed Cars—Plural Ownership...	5.21	4.35		.86
Drive-Ins	15.88	14.86		1.02
Seconds	.....	.....	.....	.....
Total	100.00	100.00	.....	.....
(Total costs are—Government $155,477—Respondents $146,076)				
Hogs—				
Straight Cars—Single Ownership..	29.54%	34.38%	4.84%	
Straight Cars—Plural Ownership..	26.30	26.75	.45	
Mixed Cars—Single Ownership...	4.93	4.83		.10%
Mixed Cars—Plural Ownership...	11.73	10.41		1.32
Drive-Ins	27.50	26.63		3.87
Seconds	.....	.....	.....	.....
Total	100.00	100.00	.....	.....
(Total costs are—Government $42,114—Respondents $50,226)				
Sheep—				
Straight Cars—Single Ownership..	62.13%	70.57%	8.44%	
Straight Cars—Plural Ownership..	13.83	14.39	.56	
Mixed Cars—Single Ownership...	3.26	2.28		.98%
Mixed Cars—Plural Ownership...	5.45	3.09		2.36
Drive-Ins	15.33	9.67		5.66
Seconds	.....	.....	.....	.....
Total	100.00	100.00	.....	.....

(b) These comparisons show that there are differences of from .10% to 8.44% representing errors in Government costs with respect to each of the modes of arrival amounting to from $155.48 to $11,691.84, some of which are overcharges and others are undercharges.

[fol. 1497] 32. Differences Between the Government's and the Respondents' Distribution of "Risk Expenses"

(a) This class of expense was distributed by the Government to species on the basis of "Head times Value" and as between modes of arrival on the basis of "Head". The respondents distributed these expenses both to species and as between modes of arrival on the basis of relative carlots. As shown on Government Exhibit No. 49 at pages 91 to 93, risk expenses include:

In the Case of	Risk Expenses: The Government Used	Risk Expenses: The Respondents Used	Resulting in Government's Costs Being: Understated	Resulting in Government's Costs Being: Overstated
(Total costs are—Government $31,109—Respondents $31,496)				
Cattle & Calves—				
Straight Cars—Single Ownership	50.49%	53.94%	3.45%	
Straight Cars—Plural Ownership	16.43	15.25		1.18%
Mixed Cars—Single Ownership	3.42	2.37		1.05
Mixed Cars—Plural Ownership	5.98	3.86		2.12
Drive-Ins	13.40	13.16		.24
Seconds	10.28	11.42	1.14	
Total	100.00	100.00	.....	.....

(b) The only item of expense on this list paid for on the basis of the value of livestock is that of $14,940.28 for bond premiums and this item represents less than 30% of the total risk expenses. Therefore, it was largely improper for the Government to use that factor as a basis for distributing all risk expenses as between species. On the other hand, none of these expenses is paid for on the basis of "Head", which is the basis used by the Government in distributing all risk expenses as between modes of arrival under each species. It is agreed that "volume" is the proper basis to be employed for both these distributions, but the relative number of "carlots" more nearly expresses the relation-

ship both to species and to modes of arrival of expenses having general application to the business as a whole.

(c) The percentages used by the Government and the respondents, respectively, are given here in comparison for the purpose of indicating the effect upon Government costs caused by the use of these improper methods of distribution:

[fol. 1498]

In the Case of	The Government Used	The Respondents Used	Resulting in Government's Costs Being Understated	Resulting in Government's Costs Being Overstated
(Total costs are—Government $15,603—Respondents $16,644)				
Hogs—				
Straight Cars—Single Ownership..	34.22%	33.09%		1.13%
Straight Cars—Plural Ownership..	25.16	25.74	.58%	
Mixed Cars—Single Ownership...	4.97	4.64		.33
Mixed Cars—Plural Ownership...	10.22	10.02		.20
Drive-Ins.....	21.69	22.72	1.03	
Seconds.....	3.74	3.79	.05	
Total.....	100.00	100.00	.....	.....
(Total costs are—Government $3,899—Respondents $3,902)				
Sheep—				
Straight Cars—Single Ownership..	71.77%	69.13%		2.64%
Straight Cars—Plural Ownership..	13.46	14.10	.64%	
Mixed Cars—Single Ownership...	1.93	2.24	.31	
Mixed Cars—Plural Ownership...	2.60	3.03	.43	
Drive-Ins.....	8.41	9.47	1.06	
Seconds.....	1.83	2.03	.20	
Total.....	100.00	100.00	.....	.....

(d) From these comparisons, it will be noted that differences of from .05% to 3.45% exist between the Government's and the respondents' distributions. These differences amount to from $7.80 to $1,073.25 and they affect each of the modes of arrival, some of which are overcharged and others are undercharged.

33. Differences Between the Government's and the Respondents' Distribution as Between "Species"

(a) In addition to the above differences between the Government's and the respondents' distributions as between modes of arrival under each species, similar differences exist in the distribution as between species in the case of

all "indirect" salaries and expenses. The differences in the distribution as between species caused by the Government's use of erroneous bases, amount to from .07% to 18.28%, some of which resulted in overcharges and others in undercharges. These errors affect each and every account herein mentioned, as well as each and every species under those accounts.

34. Government Error in Calculating the Number of Equivalent Carlots

(a) Inasmuch as rail-line business is handled on a carlot basis, while "drive-ins" and "seconds" are handled on a per-head basis, it becomes necessary to convert the number of head of drive-ins and seconds to a "carlot" basis in order to provide a common denominator for the distribution of costs as between these and other modes of arrival, and in order to have uniformity in unit-cost statements. This conversion has heretofore been accomplished by the Government by taking the average number of head-per-car based on rail-line experience for each firm and dividing it into the number of head of "drive-ins" and "seconds". However, [fol. 1499] in the Chicago case, an error was made and, in the case of both hogs and sheep, the average number of head-per-decklot was used in making the conversion, instead of head-per-car. This error had the following effect:

	The Number of Cars of			
	Drive-Ins		Seconds	
	Hogs	Sheep	Hogs	Sheep
Based on Average Number of Head Per Decklot	12,373	1,652	2,121	363
Based on Average Number of Head Per Carlot	9,856	999	1,648	221
Difference	2,517	653	433	142
Percent of Difference	26%	65%	26%	65%

(b) This error was first noted by respondents when the advance copy of Government Exhibits was turned over to them. The Government's attention was immediately called to the error and revised pencil figures, showing the average number of head-per-car based upon carlot instead of decklot rail-line experience were supplied to respondents in order that the number of equivalent carlots for "drive-ins" and "seconds" as shown on Government Exhibit 49, pages

211 to 213 and 220 to 222 could be corrected before used for cost-accounting purposes. It was assumed by respondents that the Government would make corresponding corrections on its copy, but this was not done.

(c) The results of this error in Government costs are that wherever costs have been distributed to species or to modes of arrival on the basis of these so-called "carlots", the proportions charged against hogs and sheep, and to "drive-ins" and "seconds" thereunder, have been overstated, and the charges to other species (cattle and calves) and to all modes of arrival have been understated.

(d) Greater importance, however, attaches to the fact that on the cost statements for hogs and for sheep included in Government's Exhibit 49, pages 382 to 550, the volume and the unit costs which are identified as "cars" and "Cost-per-car" are, in the case of "drive-ins" and "seconds" really "equivalent-decklots" and "cost-per-equivalent-decklot" instead, with the result that these unit-costs have been understated on the average 26% and 65% as indicated above. This condition will be clearly recognized when it is noted from these cost-statements that, in the case of "drive-ins" and "seconds", the number of cars and decklots are invariably the same in spite of the heavy percentage of double-deck cars indicated.

(e) Now, I would like to say here that the accountant for respondents in this case has, in cases for other markets, based final unit-costs for hogs and for sheep on "single-deck carlots" which is another name for "decklots", but this has no relation whatever to the erroneous calculation of "equivalent carlots" by the Government in this case. The respondents' accountant has not, in any case, calculated the equivalent carlots for "drive-ins" and "seconds" on the basis of "decklot" experience. Furthermore, wherever he has used the term "cars" the figures represented cars throughout, but under this heading the Government's figures are partly cars and partly decklots, and in arriving at the total, these two different units are added together, although identified as "cars" only.

(f) The respondents' accountant in the Chicago case, however, has used the properly calculated "carlot" basis, not only in his distributions, but also in his unit-cost deter-

minations, although in the latter connection he used the "single-deck carlot" basis at other markets. The change in unit-cost determinations was made as a result of studies made at the Chicago market indicating that the single-deck basis so greatly disturbs the unit-costs for hogs and for sheep that uniformity and comparison is completely de- [fol. 1500] stroyed between these species and with cattle and calves, as well as between modes of arrival under these species.

(g) Because the Government has used the "deckiot" basis (which it identifies as "cars") in calculating unit costs, such costs for both hogs and sheep have been very considerably understated in comparison with respondents' costs which are based on "carlots".

35. Government's Error in the Inclusion of "Split" and "Country" Sales in the Same Classification With "Seconds" or "Speculator"

(a) On the Government's unit-cost statements, Exhibit No. 49, pages 287 to 550, the "Split" and "Country" volume and expenses, and the "Split" commissions, have been combined with "Seconds." The "Country" commissions have been eliminated. The merging of these three different classes of business is erroneous and completely destroys the value of unit-costs for "seconds" in the case of all firms handling either split or country sales, and disturbs the costs of all other classes of business handled by those firms.

(b) "Split" sales are those handled on the basis of part-commissions and may affect any class of business, except "seconds" (the class in which they were included). Any mode of arrival may involve a "split" and the amount of commission charged depends upon the mode of arrival, therefore, the "splits" should not be separately classified but should be included with the mode of arrival from which they arise. However, the "splits" have not been identified in the Government's analysis by modes of arrival and the respondents, therefore, found it necessary to prorate them over the modes of arrival (other than "seconds") on the basis of relative volume. This was done both as to volume and commissions.

(c) "Country" sales are those transacted off the market and which are not subject to rate regulation. For that reason, they were eliminated by respondents completely as to volume, cost, and commissions. However, the Government only eliminated the commissions—the volume and costs having been included under the "seconds" as previously explained.

36. Government's Erroneous Theory of Unit Cost-Per-Car

(a) On all Government costs statements, Exhibit No. 49 pages 287 to 550, an item has been shown immediately under "Income-Gross-Per-Car", identified as "Cost-Per-Car". This item does not represent the actual cost-per-car, but the theoretical cost-per-car, and these costs were calculated by taking the unit-cost for all modes of arrival and distributing the amount to each mode of arrival according to relative unit-commissions. Presumably these theoretical costs were set up to indicate what the unit-cost for each mode of arrival would be if costs were controlled according to the relative amount of commissions produced by each mode of arrival.

(b) It is obvious that whatever purpose the theory might serve, the application of it has been reversed by the Government. The theory should have been applied to commissions, which are subject to regulation and control, but not to costs. If the theory had been correctly applied, the results would have indicated the extent of adjustments in commission rates required to equalize the profit or loss on each mode of arrival. The respondents, however, see no value in such a theory because the primary cost influence is the "size of the draft" and not "mode of arrival."

[fol. 1501] 37. Comparison of Government's Costs and Respondents' Costs

(a) In view of the omission on the part of the Government of essential elements of cost, such as owners' salaries, etc., which amount to $376,263.55 (or about 12% of the total cost) and the many errors of large amounts which have been pointed to in the Government's distribution of salaries and expenses to each and all the species and to each and all the modes of arrival thereunder, as well as the Government's basic error in arriving at the number of

so-called equivalent "Cars" and its effect upon all the costs, and the Government's confusion as to the proper classification of business on its cost statements, and the Government's use of "Decklots" in some cases and "Carlots" in other cases for figuring the unit-costs, it is utterly impossible to draw any proper comparisons between the Government's costs as they are stated, and the respondents' costs. However, such a comparison is highly important in order that the net results of all the errors made by the Government may be allocated to species and to modes of arrival and placed against the corrected results as indicated by the respondents' costs.

(b) The Government's Exhibit No. 49 pages 287 to 550 provides a separate cost statement for each of the respondents, except in a number of cases where the volume of business handled is extremely small. The Government did not provide a composite cost statement for all the respondents, therefore, in order to make necessary comparisons between the Government's costs and the respondents' costs, the individual cost statements have been summarized and the missing parts have been supplied. In this summarization, no change whatever has been made in the Government's distributions as heretofore criticized—the amounts as distributed by the Government for individual firms having simply been added together in arriving at the composite aggregate costs. However, in order that the unit-costs might be compared, I have based the same on the number of "Carlots" as properly calculated in arriving at the Government's cost-per-car.

(c) The respondents have also prepared a separate cost statement for each of their firms, and these may be found on sheets Nos. 1 to 101 of schedule No. 4. The respondents have also prepared a composite cost statement for all their firms which may be found on sheet 102 of schedule No. 4. All of the respondents' costs statements have been based on corrected methods of computation and distribution, as already explained.

(d) In order that the extent of respondents' corrections in the Government's cost statements may be more definitely measured and fully appreciated, and in order that their effect on unit-costs, and possible improper and unfair in-

fluence on commission rate considerations, may be clearly set forth, the Government's costs figures and the respondents' costs figures will now be given in comparison.

(e) Attention is directed to the fact that this comparison considers each classification of accounts separately and shows the differences between the Government's and the Respondents' figures in red when the Government's costs are lower than the respondents, and in black when the Government's costs are higher than the respondents. It also compares the aggregate costs, and the cost-per-car. In these comparisons, the consolidated results of Government errors and their effect on each account, species, and mode of arrival, as previously criticized, may be considered in condensed form.

(Here follows 1 photolithograph, side folio 1502)

BEFORE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 402

NOTE:
Differences in RED indicate Government under Respondents
Differences in BLACK indicate Government over Respondents

COMPARISON OF GOVERNMENT'S COSTS AND RESPONDENTS' COSTS

ELEMENT OF COST	CATTLE AND CALVES								HOGS						
	SELLING SERVICE							BUYING SERVICE	SELLING SERVICE						
	STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE-INS	SECONDS	TOTAL		STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE-INS	SECONDS	TO
SELLING & BUYING SALARIES – GOVERNMENT	$ 340 043	$136 099	$23 496	$ 49 705	$127 590	$ 76 952	$753 885	$17 746	$ 99 689	$79 683	$ 15 092	$31 988	$73 999	$ 13 009	$313
SELLING & BUYING SALARIES – RESPONDENTS	428 014	161 557	32 813	67 392	194 306	89 878	973 960	23 202	92 845	92 462	17 679	41 296	101 547	12 153	357
DIFFERENCE	87 971	25 458	9 317	17 687	66 716	12 926	220 075	5 456	6 844	12 779	2 587	9 308	27 548	856	44
COUNTRY SELLING & BUYING – CR. – GOVERNMENT	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
COUNTRY SELLING & BUYING – CR. – RESP'T.	1 076	304	36	66	298	195	1 975	–	–	–	–	–	–	–	
DIFFERENCE	1 076	304	36	66	298	195	1 975	–	–	–	–	–	–	–	
SELLING EXPENSE – YARD – GOVERNMENT	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
SELLING EXPENSE – YARD – RESPONDENTS	8 531	3 044	568	903	3 298	1 416	17 760	–	–	–	–	–	–	–	
DIFFERENCE	8 531	3 044	568	903	3 298	1 416	17 760	–	–	–	–	–	–	–	
YARDING SALARIES – GOVERNMENT	63 781	47 268	6 407	17 572	47 938	20 395	203 376	4 779	23 645	30 938	5 859	17 300	42 226	3 748	123
YARDING SALARIES – RESPONDENTS	96 689	34 618	6 971	12 773	41 875	12 079	205 005	4 790	35 849	29 867	6 901	15 448	36 415	2 189	126
DIFFERENCE	32 908	12 670	564	4 799	6 058	8 316		11	12 204	1 071	1 042	1 852	5 811	1 559	2
YARDING EXPENSE – GOVERNMENT	6 734	5 074	620	1 517	4 604	1 889	20 438	400	265	343	55	190	458	34	1
YARDING EXPENSE – RESPONDENTS	1 603	504	141	201	491	164	3 104	–	439	327	65	173	419	22	1
DIFFERENCE	5 131	4 570	479	1 316	4 113	1 725	17 334	400	174	16	10	17	39	12	
OFFICE SALARIES – ACCT. SALES – GOVERNMENT	–	–	–	–	–	–	92 670	–	–	–	–	–	–	–	51
OFFICE SALARIES – ACCT. PROHS – GOVERNMENT	–	–	–	–	–	–	–	1 468	–	–	–	–	–	–	
OFFICE SALARIES – OTHER – GOVERNMENT	–	–	–	–	–	–	110 688	1 738	–	–	–	–	–	–	61
ADM & GENERAL SALARIES – GOVERNMENT	–	–	–	–	–	–	11 830	187	–	–	–	–	–	–	6
TOTAL – GOVERNMENT	50 718	50 835	4 615	28 213	56 740	24 067	215 188	3 413	16 283	34 675	3 386	20 318	42 159	3 393	120
OFFICE SALARIES – ACCT. SALES – RESPONDENTS	27 152	22 686	3 036	9 331	23 669	10 163	96 037	–	9 464	13 367	2 309	7 410	17 949	1 158	51
OFFICE SALARIES – ACCT. PROHS – RESPONDENTS	–	–	–	–	–	–	–	2 457	–	–	–	–	–	–	
OFFICE SALARIES – OTHER RESPONDENTS	61 919	17 974	2 960	4 739	15 639	14 342	117 573	3 252	19 770	14 711	2 870	5 051	13 450	1 968	58
ADM & GENERAL SALARIES – RESPONDENTS	16 429	3 202	465	743	3 061	2 737	26 637	551	3 017	2 195	315	846	1 967	353	8
TOTAL – RESPONDENTS	105 500	43 862	6 461	14 813	42 369	27 242	240 247	6 260	32 251	30 273	5 494	14 307	33 366	3 479	115
DIFFERENCE	54 782	6 973	1 846	13 400	14 371	3 175	25 059	2 847	15 968	4 402	2 108	6 011	8 793	86	1
OFFICE EXPENSE – GOVERNMENT	27 670	27 547	2 413	14 050	29 591	12 599	113 870	1 822	8 967	18 550	1 804	10 254	22 882	1 541	63
OFFICE EXPENSE – RESPONDENTS	50 738	22 643	3 115	7 228	20 984	12 809	117 517	3 064	15 885	15 036	2 764	6 915	17 092	1 731	59
DIFFERENCE	23 068	4 904	702	6 822	8 607	210	3 647	1 242	6 918	3 514	960	3 339	5 790	190	4
ADM & GENERAL EXPENSE – GOVERNMENT	11 367	10 433	939	5 499	10 852	4 497	43 607	746	3 334	6 682	708	3 896	8 274	563	23
ADM & GENERAL EXPENSE – RESPONDENTS	25 675	6 729	1 070	1 718	5 547	4 794	45 593	1 384	7 257	5 476	1 089	2 237	4 792	843	21
DIFFERENCE	14 288	3 704	131	3 781	5 305	297	1 926	638	3 923	1 206	381	1 659	3 482	280	1
BUSINESS GETTING SALARIES – GOVERNMENT	75 513	27 803	4 272	8 602	22 729	–	138 919	2 987	19 840	20 105	3 426	8 982	17 577	–	69
BUSINESS GETTING SALARIES– ELE A – RESPT.	47 224	15 302	2 408	4 344	12 299	–	81 577	–	15 782	13 279	2 202	5 095	10 059	–	46
BUSINESS GETTING SALARIES– ELE B – RESPT.	51 992	16 658	2 549	4 653	15 286	–	91 138	–	12 871	11 406	1 987	4 342	8 358	–	38
TOTAL – RESPONDENTS	99 216	31 960	4 957	8 997	27 585	–	172 715	–	28 653	24 685	4 189	9 437	18 417	–	85
DIFFERENCE	23 703	4 157	685	395	4 856	–	33 796	2 987	8 813	4 580	763	455	840	–	17
BUSINESS GETTING EXPENSE – GOVERNMENT	95 868	32 707	4 848	8 598	24 330	–	166 351	3 225	26 178	22 691	4 292	10 376	22 010	–	85
BUSINESS GETTING EXPENSE– ELE A – RESPT.	68 610	18 678	2 699	4 178	14 620	–	108 785	–	18 345	13 226	2 403	5 082	11 815	–	50
BUSINESS GETTING EXPENSE– ELE B – RESPT.	37 813	13 199	2 160	3 815	10 146	–	67 133	–	10 024	8 638	1 512	3 595	6 055	–	29
	106 423	31 877	4 859	7 993	24 766	–	175 918	–	28 369	21 864	3 915	8 677	17 870	–	80

COUNTRY SELLING & BUYING – CR. – RESP'T.	1 076	304	36	66	298	195	1 975	–	–	–	–	–	–	–	–	–
DIFFERENCE	1 076	304	36	66	298	195	1 975	–	–	–	–	–	–	–	–	–
SELLING EXPENSE – YARD – GOVERNMENT	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
SELLING EXPENSE – YARD – RESPONDENTS	8 531	3 044	568	903	3 298	1 416	17 760	–	–	–	–	–	–	–	–	–
DIFFERENCE	8 531	3 044	568	903	3 298	1 416	17 760	–	–	–	–	–	–	–	–	–
YARDING SALARIES – GOVERNMENT	63 781	47 268	6 407	17 572	47 933	20 395	203 376	4 779	23 645	30 938	5 859	17 300	42 226	3 748	123 71	
YARDING SALARIES – RESPONDENTS	96 689	34 618	6 971	12 773	41 875	12 079	205 005	4 790	35 849	29 867	6 901	15 448	36 415	2 189	126	
DIFFERENCE	32 908	12 670	564	4 799	6 058	8 316		11	12 204	1 071	1 042	1 852	5 811	1 559	2	
YARDING EXPENSE – GOVERNMENT	6 734	5 074	620	1 517	4 604	1 889	20 438	400	265	343	55	190	458	34	1	
YARDING EXPENSE – RESPONDENTS	1 603	504	141	201	491	164	3 104	–	439	327	65	173	419	22	1	
DIFFERENCE	5 131	4 570	479	1 316	4 113	1 725	17 334	400	174	16	10	17	39	12		
OFFICE SALARIES – ACCT. SALES – GOVERNMENT	–	–	–	–	–	–	92 670	–	–	–	–	–	–	–	51	
OFFICE SALARIES – ACCT. PRCHS – GOVERNMENT	–	–	–	–	–	–	–	1 468	–	–	–	–	–	–	–	
OFFICE SALARIES – OTHER – GOVERNMENT	–	–	–	–	–	–	110 688	1 738	–	–	–	–	–	–	61	
ADM & GENERAL SALARIES – GOVERNMENT	–	–	–	–	–	–	11 830	187	–	–	–	–	–	–	6	
TOTAL – GOVERNMENT	50 718	50 835	4 615	28 213	56 740	24 067	215 188	3 413	16 283	34 675	3 386	20 318	42 159	3 393	120	
OFFICE SALARIES – ACCT. SALES – RESPONDENTS	27 152	22 686	3 036	9 331	23 669	10 163	96 037	–	9 464	13 367	2 309	7 410	17 949	1 158	51	
OFFICE SALARIES – ACCT. PRCHS – RESPONDENTS	–	–	–	–	–	–	–	2 457	–	–	–	–	–	–	–	
OFFICE SALARIES – OTHER RESPONDENTS	61 919	17 974	2 960	4 739	15 639	14 342	117 573	3 252	19 770	14 711	2 870	051	13 450	1 968	58	
ADM & GENERAL SALARIES – RESPONDENTS	16 429	3 202	465	743	3 061	2 737	26 637	551	3 017	2 195	315	846	1 967	353	8	
TOTAL – RESPONDENTS	105 500	43 862	6 461	14 813	42 369	27 242	240 247	6 260	32 251	30 273	5 494	14 307	33 366	3 479	119	
DIFFERENCE	54 782	6 973	1 846	13 400	14 371	3 175	25 059	2 847	15 968	4 402	2 108	6 011	8 793	86	1	
OFFICE EXPENSE – GOVERNMENT	27 670	27 547	2 413	14 050	29 591	12 599	113 870	1 822	8 967	18 550	1 804	10 254	22 882	1 541	63	
OFFICE EXPENSE – RESPONDENTS	50 738	22 643	3 115	7 228	20 984	12 809	117 517	3 064	15 885	15 036	2 764	6 915	17 092	1 731	59	
DIFFERENCE	23 068	4 904	702	6 822	8 607	210	3 647	1 242	6 918	3 514	960	3 339	5 790	190	4	
ADM & GENERAL EXPENSE – GOVERNMENT	11 367	10 433	939	5 499	10 852	4 497	43 607	746	3 334	6 682	708	3 896	8 274	563	23	
ADM & GENERAL EXPENSE – RESPONDENTS	25 675	6 729	1 070	1 718	5 547	4 794	45 593	1 384	7 257	5 476	1 089	2 237	4 792	843	21	
DIFFERENCE	14 288	3 704	131	3 781	5 305	297	1 926	638	3 923	1 206	381	1 659	3 482	280	1	
BUSINESS GETTING SALARIES – GOVERNMENT	75 513	27 803	4 272	8 602	22 729	–	138 919	2 987	19 840	20 105	3 426	8 982	17 577	–	69	
BUSINESS GETTING SALARIES– ELE A – RESPT.	47 224	15 302	2 408	4 344	12 299	–	81 577	–	15 782	13 279	2 202	5 095	10 059	–	46	
BUSINESS GETTING SALARIES– ELE B – RESPT.	51 992	16 658	2 549	4 653	15 286	–	91 138	–	12 871	11 406	1 987	4 342	8 358	–	38	
TOTAL – RESPONDENTS	99 216	31 960	4 957	8 997	27 585	–	172 715	–	28 653	24 685	4 189	9 437	18 417	–	85	
DIFFERENCE	23 703	4 157	685	395	4 856	–	33 796	2 987	8 813	4 580	763	455	840	–	15	
BUSINESS GETTING EXPENSE – GOVERNMENT	95 868	32 707	4 848	8 598	24 330	–	166 351	3 225	26 178	22 691	4 292	10 376	22 010	–	85	
BUSINESS GETTING EXPENSE– ELE A – RESPT.	68 610	18 678	2 699	4 178	14 620	–	108 785	–	18 345	13 226	2 403	5 082	11 815	–	50	
BUSINESS GETTING EXPENSE– ELE B – RESPT.	37 813	13 199	2 160	3 815	10 146	–	67 133	–	10 024	8 638	1 512	3 595	6 055	–	29	
TOTAL – RESPONDENTS	106 423	31 877	4 859	7 993	24 766	–	175 918	–	28 369	21 864	3 915	8 677	17 870	–	80	
DIFFERENCE	10 555	830	11	605	436	–	9 567	3 225	2 191	827	377	1 699	4 140	–	4	
RISK EXPENSE – GOVERNMENT	15 544	5 059	1 066	1 806	4 524	3 110	31 109	1 160	4 929	3 752	795	1 533	3 677	617	15	
RISK EXPENSE – RESPONDENTS	16 658	4 830	787	1 250	4 554	3 417	31 496	–	5 342	4 138	812	1 679	4 064	609	16	
DIFFERENCE	1 114	229	279	556	30	307	387	1 160	413	386	17	146	387	8	1	
RETURN ON INVESTED CAPITAL – GOVERNMENT	13 786	4 211	637	1 071	3 651	3 084	26 440	766	4 636	3 698	643	1 419	4 116	715	15	
RETURN ON INVESTED CAPITAL – RESPONDENTS	17 537	5 374	808	1 371	4 715	3 691	33 496	948	6 073	4 803	815	1 859	4 310	626	18	
DIFFERENCE	3 751	1 163	171	300	1 064	607	7 056	182	1 437	1 105	172	440	194	89	3	
AGGREGATE COST OF SERVICE – GOVERNMENT	701 044	347 056	49 313	136 633	332 544	146 593	1 713 183	37 044	207 766	221 117	36 060	106 256	237 378	23 620	832	
AGGREGATE COST OF SERVICE – RESPONDENTS	955 508	346 694	62 514	124 573	370 192	155 295	2 014 776	39 648	252 963	228 931	43 723	102 028	238 292	21 652	887	
DIFFERENCE	254 464	362	201	12 060	37 648	8 702	301 593	2 604	45 197	7 814	7 663	4 228	914	1 968	55	
NUMBER OF CARS	46 016	13 008	2 018	3 289	11 227	9 747	85 305	2 484	14 400	11 203	2 020	4 360	9 890	1 648	40	
COST PER CAR – GOVERNMENT	$ 15.23	$ 26.68	$ 24.44	$ 41.54	$ 29.62	$ 15.04	$ 20.08	$ 14.91	$ 14.43	$ 19.74	$ 17.85	$ 24.37	$ 24.00	$ 14.33	$ 1	
COST PER CAR – RESPONDENTS	20.76	26.65	30.98	37.88	32.97	15.93	23.62	15.96	17.57	20.43	21.65	23.40	24.09	13.15	2	
DIFFERENCE	5.53	.03	6.54	3.66	3.35	.89	3.54	1.05	3.14	.69	3.80	.97	.09	1.18		

...RE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
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...F GOVERNMENT'S COSTS AND RESPONDENTS' COSTS

Sheet 16.

HOGS									SHEEP								
BUYING SERVICE	SELLING SERVICE							BUYING SERVICE	SELLING SERVICE							BUYING SERVICE	TOTAL ALL SPECIES
	STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE-INS	SECONDS	TOTAL		STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE-INS	SECONDS	TOTAL		
97 746	$ 99 689	$79 683	$ 15 092	$31 988	$73 999	$ 13 009	$313 460	$4 112	$ 45 404	$ 9 857	$ 2 260	$3 327	$ 6 824	$ 5 069	$ 76 741	$5 250	$1 171 194
23 202	92 845	92 462	17 679	41 296	101 547	12 153	357 982	5 600	48 908	12 802	2 780	4 224	17 429	2 306	84 449	5 324	1 450 517
5 456	6 844	12 779	2 587	9 308	27 548	856	44 322	1 488	1 496	2 945	520	897	7 605	2 763	7 706	74	279 323
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
–	–	–	–	–	–	–	–	–	243	44	–	–	12	2	301	–	2 276
–	–	–	–	–	–	–	–	–	243	44	–	–	12	2	301	–	2 276
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	17 760
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	17 760
4 779	23 645	30 938	5 859	17 300	42 226	3 748	123 716	596	7 350	4 110	680	1 485	4 770	2 344	20 689	643	353 799
4 790	35 849	29 867	6 901	15 448	36 415	2 189	126 669	501	12 698	2 926	443	848	4 060	354	21 329	803	359 097
11	12 204	1 071	1 042	1 852	5 811	1 559	2 953	85	5 348	1 184	187	637	710	1 980	640	160	5 298
400	265	343	55	190	458	34	1 345	5	201	188	12	37	93	36	503	5	22 696
–	439	327	65	173	419	22	1 445	–	275	50	8	6	44	9	387	–	4 936
400	174	16	10	17	39	12	100	5	74	74	9	31	49	27	116	5	17 760
–	–	–	–	–	–	–	51 770	–	–	–	–	–	–	–	13 470	–	157 910
1 468	–	–	–	–	–	–	–	199	–	–	–	–	–	–	–	373	2 040
1 738	–	–	–	–	–	–	61 834	239	–	–	–	–	–	–	16 090	431	191 040
187	–	–	–	–	–	–	6 610	29	–	–	–	–	–	–	1 719	46	20 421
3 413	16 283	34 675	3 386	20 318	42 159	3 393	120 214	467	8 446	5 911	790	3 169	8 674	4 329	31 279	850	371 411
–	9 464	13 367	2 309	7 410	17 949	1 158	51 657	–	4 190	2 325	475	1 390	4 047	316	12 703	–	160 397
2 457	–	–	–	–	–	–	–	335	–	–	–	–	–	–	–	1 315	4 107
3 252	19 770	14 711	2 870	10 051	13 450	1 968	58 820	647	10 477	2 023	360	432	1 328	288	14 908	684	195 884
551	3 017	2 195	315	846	1 967	353	8 693	54	3 603	644	47	64	280	48	4 686	200	40 821
6 260	32 251	30 273	5 494	14 307	33 366	3 479	119 170	1 036	18 270	4 992	882	1 846	5 685	652	32 297	2 199	401 209
2 847	15 968	4 402	2 108	6 011	8 793	86	1 044	569	9 824	919	132	1 323	3 019	3 677	1 018	1 349	29 798
1 822	8 967	18 550	1 804	10 254	22 882	1 541	63 998	270	4 424	3 134	397	1 679	4 762	1 856	16 252	457	196 669
3 064	15 885	15 036	2 764	6 915	17 092	1 731	59 423	578	7 730	2 343	438	975	3 080	389	14 985	1 159	196 669
1 242	6 918	3 514	960	3 339	5 790	190	4 575	308	3 306	791	41	704	1 682	1 487	1 317	695	–
746	3 334	6 682	708	3 896	8 274	563	23 457	91	3 954	2 182	173	700	2 200	1 540	10 749	688	79 338
1 384	7 257	5 476	1 089	2 237	4 792	843	21 694	229	7 047	1 327	149	182	664	142	9 511	987	79 338
638	3 923	1 206	381	1 659	3 482	280	1 763	138	3 093	855	24	518	1 536	1 398	1 238	99	–
2 987	19 640	20 105	3 426	8 982	17 577	–	69 930	364	8 319	2 101	559	1 035	2 352	–	14 366	681	227 247
–	15 782	13 279	2 202	5 095	10 059	–	46 417	–	6 002	1 415	379	460	1 240	–	9 496	–	137 490
–	12 871	11 406	1 987	4 342	8 358	–	38 964	–	6 407	1 704	292	486	1 055	–	9 944	–	140 046
–	28 653	24 685	4 189	9 437	18 417	–	85 381	–	12 409	3 119	671	946	2 295	–	19 440	–	277 536
2 987	8 813	4 580	763	455	840	–	15 451	364	4 090	1 018	112	89	57	–	5 074	681	30 269
3 225	26 178	22 691	4 292	10 376	22 010	–	85 547	385	18 249	3 830	818	1 300	3 551	–	27 748	1 421	284 677
–	18 345	13 226	2 403	5 082	11 815	–	50 871	–	12 330	2 365	326	414	1 402	–	16 837	–	176 493
–	10 024	8 638	1 512	3 595	6 055	–	29 824	–	10 480	1 896	241	423	909	–	13 949	–	110 906
–	28 369	21 864	3 915	8 677	17 870	–	80 695	–	22 810	4 261	567	837	2 311	–	30 786	–	287 399
3 225	2 191	827	377	1 699	4 140	–	4 852	385	4 561	431	251	463	1 240	–	3 038	1 421	2 722
1 160	4 929	3 752	795	1 533	3 677	617	15 303	289	2 579	502	82	118	388	230	3 899	282	52 042
–	5 342	4 138	812	1 679	4 064	609	16 644	–	2 646	540	77	119	425	95	3 902	–	52 042
160	413	286	17	146	387	8	1 341	289	67	38	5	1	37	135	3	282	–

–	–	–	–	–	–	–	–	–	243	44	–	–	12	2	301	–	2 276
–	–	–	–	–	–	–	–	–	243	44	–	–	12	2	301	–	2 276
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	17 760
–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	17 760
4 779	23 645	30 938	5 859	17 300	42 226	3 748	123 716	596	7 350	4 110	680	1 485	4 770	2 344	20 689	643	353 799
4 790	35 849	29 867	6 901	15 448	36 415	2 189	126 669	501	12 698	2 926	443	848	4 060	354	21 329	803	359 097
11	12 204	1 071	1 042	1 852	5 811	1 559	2 953	85	5 348	1 194	187	637	710	1 980	640	160	5 298
400	265	343	55	190	458	34	1 345	5	201	187	12	37	93	36	503	5	22 696
–	439	327	65	173	419	22	1 445	–	275	50	3	6	44	9	387	–	4 936
400	174	16	10	17	39	12	100	5	74	74	9	31	49	27	116	5	17 760
–	–	–	–	–	–	–	51 770	–	–	–	–	–	–	–	13 470	–	157 910
1 468	–	–	–	–	–	–	–	199	–	–	–	–	–	–	–	373	2 040
1 738	–	–	–	–	–	–	61 834	239	–	–	–	–	–	–	16 090	431	191 040
187	–	–	–	–	–	–	6 610	29	–	–	–	–	–	–	1 719	46	20 421
3 413	16 283	34 675	3 386	20 318	42 159	3 393	120 214	467	8 446	5 911	750	3 169	8 674	4 329	31 279	850	371 411
–	9 464	13 367	2 309	7 410	17 949	1 158	51 657	–	4 190	2 325	475	1 350	4 047	316	12 703	–	160 397
2 457	–	–	–	–	–	–	–	335	–	–	–	–	–	–	–	1 315	4 107
3 252	19 770	14 711	2 870	7 051	13 450	1 968	58 820	647	10 477	2 023	360	432	1 328	288	14 908	684	195 884
551	3 017	2 195	315	846	1 967	353	8 693	54	3 603	644	47	64	280	48	4 686	200	40 821
6 260	32 251	30 273	5 494	14 307	33 366	3 479	119 170	1 036	18 270	4 992	882	1 846	5 655	652	32 297	2 199	401 209
2 847	15 968	4 402	2 108	6 011	8 793	86	1 044	569	9 824	919	132	1 323	3 019	3 677	1 918	1 349	29 796
1 822	8 967	18 550	1 804	10 254	22 882	1 541	63 998	270	4 424	3 134	397	1 679	4 762	1 856	16 252	457	196 669
3 064	15 885	15 036	2 764	6 915	17 092	1 731	59 423	578	7 730	2 343	438	975	3 080	369	14 995	1 152	196 669
1 242	6 916	3 514	960	3 339	5 790	190	4 575	308	3 306	791	41	704	1 682	1 487	1 317	695	–
746	3 334	6 682	708	3 896	8 274	563	23 457	91	3 954	2 182	173	700	2 200	1 540	10 749	688	79 338
1 384	7 257	5 476	1 089	2 237	4 792	843	21 694	229	7 047	1 327	149	182	664	142	9 511	987	79 338
638	3 923	1 206	381	1 659	3 482	280	1 763	138	3 093	855	24	518	1 536	1 398	1 238	299	–
2 987	19 840	20 105	3 426	8 982	17 577	–	69 930	364	8 319	2 101	559	1 035	2 352	–	14 366	681	227 247
–	15 782	13 279	2 202	5 095	10 059	–	46 417	–	6 002	1 415	379	460	1 240	–	9 496	–	137 490
–	12 871	11 406	1 987	4 342	8 358	–	38 964	–	6 407	1 704	292	486	1 055	–	9 944	–	140 046
–	28 653	24 685	4 189	9 437	18 417	–	85 381	–	12 409	3 119	671	946	2 295	–	19 440	–	277 536
2 987	8 813	4 580	763	455	840	–	15 451	364	4 090	1 018	112	89	57	–	5 074	681	50 289
3 225	26 178	22 691	4 292	10 376	22 010	–	85 547	385	18 249	3 830	818	1 300	3 551	–	27 748	1 421	284 677
–	18 345	13 226	2 403	5 082	11 815	–	50 871	–	12 330	2 365	326	414	1 402	–	16 837	–	176 493
–	10 024	8 638	1 512	3 595	6 055	–	29 824	–	10 480	1 896	241	423	909	–	13 949	–	110 906
–	28 369	21 864	3 915	8 677	17 870	–	80 695	–	22 810	4 261	567	837	2 311	–	30 786	–	287 399
3 225	2 191	827	377	1 699	4 140	–	4 852	385	4 561	431	251	463	1 240	–	3 038	1 421	2 722
1 160	4 929	3 752	795	1 533	3 677	617	15 303	289	2 579	502	82	118	388	230	3 899	282	52 042
–	5 342	4 138	812	1 679	4 064	609	16 644	–	2 646	540	77	119	425	95	3 902	–	52 042
1 160	413	386	17	146	387	8	1 341	289	67	38	5	1	37	135	3	282	–
766	4 636	3 698	643	1 419	4 116	715	15 227	159	1 850	391	74	104	485	323	3 227	171	45 990
948	6 073	4 803	815	1 859	4 310	626	18 486	154	2 560	524	90	130	413	91	3 808	207	57 099
182	1 437	1 105	172	440	194	89	3 259	5	710	133	16	26	72	232	581	36	11 109
37 044	207 766	221 117	36 060	106 256	237 378	23 620	832 197	6 738	101 776	32 142	5 755	12 954	37 099	15 727	205 453	10 448	2 805 063
39 648	252 963	228 931	43 723	102 028	238 292	21 652	887 589	8 098	131 110	32 840	6 100	10 113	36 364	4 016	220 543	10 672	3 181 326
2 604	45 197	7 814	7 663	4 228	914	1 968	55 392	1 360	29 334	698	345	2 841	735	11 711	15 090	224	376 263
2 484	14 400	11 203	2 020	4 360	9 890	1 648	43 521	538	7 511	1 532	243	329	1 029	221	10 865	718	143 431
$ 14.91	$ 14.43	$ 19.74	$ 17.85	$ 24.37	$ 24.00	$ 14.33	$ 19.12	$12.52	$ 13.55	$ 20.98	$ 23.68	$ 39.37	$ 36.05	$ 71.16	$ 18.91	$ 14.55	$ 19.56
15.96	17.57	20.43	21.65	23.40	24.09	13.15	20.39	15.05	17.46	21.44	25.10	30.74	35.34	18.17	20.30	14.86	22.13
1.05	3.14	.69	3.80	.92	.09	1.18	1.27	2.53	3.91	.46	1.42	8.63	.71	52.99	1.39	.31	2.62

[fol. 1503] (f) It will be noted from these comparisons that not a single account, species, or mode of arrival has escaped the effect of the Government's errors, and that these errors amount to from $224.00 to $254,464.00 in the aggregate costs for the respective modes of arrival. When reduced to a cost-per-car basis these differences amount to as much as 36.31% or $5.53 per car, and in the case of sheep "seconds" these differences reach an extreme of 74.47% or $52.99 per car. These differences, of course, also have an equal effect upon the profit or loss per car and, in order that this may be more clearly indicated, the following comparisons will be made:

In the Case Of	Cost per Car		Comm. per Car	Profit or Loss Per Car			
				Profit		Loss	
	Govt.	Resp.		Govt.	Resp.	Govt.	Resp.
Cattle & Calves							
Straight Cars—Single Ownership	$15.23	$20.76	$19.98	$4.75	.....	.....	$.78
Straight Cars—Plural Ownership	26.68	26.65	23.51	.....	.....	$3.17	3.14
Mixed Cars—Single Ownership	24.44	30.98	22.85	.....	.....	1.59	8.13
Mixed Cars—Plural Ownership	41.54	37.88	25.51	.....	.....	16.03	12.37
Drive-Ins	29.62	32.97	22.78	.....	.....	6.84	10.19
Seconds	15.04	15.93	10.05	.....	.....	4.99	5.88
Total Selling Service	20.08	23.62	20.03	.....	.....	.05	3.59
Buying Service	14.91	15.96	15.27	.36	.....	.....	.69
Hogs							
Straight Cars—Single Ownership	14.43	17.57	17.79	3.36	$.22	.....	.....
Straight Cars—Plural Ownership	19.74	20.43	20.36	.62	.....	.....	.07
Mixed Cars—Single Ownership	17.85	21.65	21.16	3.31	.....	.....	.49
Mixed Cars—Plural Ownership	24.37	23.40	23.33	.....	.....	1.04	.07
Drive-Ins	24.00	24.09	24.11	.11	.02	.....	.....
Seconds	14.33	13.15	11.00	.....	.....	3.33	2.15
Total Selling Service	19.12	20.39	20.34	1.22	.....	.....	.05
Buying Service	12.52	15.05	10.30	.....	.....	2.22	4.75
Sheep							
Straight Cars—Single Ownership	13.55	17.46	18.91	5.36	1.45	.....	.....
Straight Cars—Plural Ownership	20.98	21.44	20.64	.....	.....	.34	.80
Mixed Cars—Single Ownership	23.68	25.10	30.64	6.96	5.54	.....	.....
Mixed Cars—Plural Ownership	39.37	30.74	37.86	.....	7.12	1.51	.....
Drive-Ins	36.05	35.34	34.06	.....	.....	1.99	1.28
Seconds	71.16	18.17	8.10	.....	.....	63.06	10.07
Total Selling Service	18.91	20.30	21.20	2.29	.90	.....	.....
Buying Service	14.55	14.86	15.13	.58	.27	.....	.....
All Species—All Modes of Arrival	19.56	22.18	20.07	.51	.....	.....	2.11

(g) In the aggregate, the above differences for all species and all modes of arrival, amount to $376,263.00, or 13.41%, representing the net under-statement of Government costs.

(h) Attention is also called to the fact that in the event the respondents' cost-per-car as properly calculated, is compared with the Government's cost-per-car which is in fact the cost-per-decklot, these differences will be found to be very much greater, since the Government's unit-costs would, of necessity, be much lower. For this reason, no comparisons can be properly made with the Government's costs as they have been prepared and submitted and, for the same reason these costs had to be restated by respond-
[fol. 1504] ents as indicated in this testimony.

38. Unit Functional Costs

(a) In view of the classification of costs for rate-making purposes, the functional costs for all respondent firms, combined, as shown on schedule No. 4 sheet 102, have been reduced to a unit-cost bases and shown on schedule No. 5. The unit-costs per-car are given in the case of rail-line arrivals, and the unit-costs per-head are given in the case of "drive-ins" and "seconds". I shall now compare the Government's functional unit-costs with those of the respondents.

(b) In connection with these figures, attention is called to the fact that in the Government's distribution of cost elements to modes of arrival, "Office Salaries" and "Administration & General Salaries" were combined. For the purpose of this comparison, the respondents have separated them.

(c) From these comparisons, it will be noted that the Government's omission of essential costs, and its use of various erroneous methods of distributing salaries and expenses to species and as between modes of arrival, have so completely disturbed the functional costs as to render them unworthy of consideration, and without value for rate-making purposes. In fact, their use would unquestionably operate unfairly to these commission men, and would result in injustice and inequality in the rates from the shippers standpoint.

		Straight S/O	Straight P/O	Mixed S/O	Mixed P/O	Drive-Ins*	Seconds*
Cattle & Calves							
Selling	Govt.	$7.39	10.46	11.64	15.11	.3932	.3092
Selling	Resp.	9.46	12.63	16.53	20.74	.6081	.3660
Yarding	Govt.	1.53	4.03	3.48	5.80	.1619	.0895
Yarding	Resp.	2.14	2.70	3.53	3.94	.1306	.0492
Office Salaries	Govt.	1.04	3.69	2.16	8.11	.1653	.0914
Office Salaries	Resp.	1.93	3.13	2.98	4.28	.1212	.0985
Office Expense	Govt.	.60	2.12	1.20	4.27	.0912	.0506
Office Expense	Resp.	1.10	1.74	1.54	2.20	.0647	.0515
Business Getting, Etc.	Govt.	3.72	4.65	4.52	5.23	.1450	.....
Business Getting, Etc.	Resp.	4.47	4.91	4.86	5.17	.1614	.....
Administration & General	Govt.	.31	1.02	.59	2.14	.0431	.0230
Administration & General	Resp.	.91	.76	.76	.75	.0265	.0303
Risk Expense	Govt.	.34	.39	.53	.55	.0139	.0125
Risk Expense	Resp.	.36	.37	.38	.38	.0140	.0137
Return on Capital	Govt.	.30	.32	.32	.33	.0113	.0124
Return on Capital	Resp.	.38	.41	.40	.42	.0145	.0148
Total Costs	Govt.	15.23	26.68	24.44	41.54	1.0249	.5886
Total Costs	Resp.	20.75	26.65	30.98	37.88	1.1410	.6240
[fol. 1505] Hogs							
Selling	Govt.	$6.92	$7.11	$7.47	$7.34	$.0894	$.0912
Selling	Resp.	6.45	8.25	8.75	9.47	.1227	.0852
Yarding	Govt.	1.66	2.79	2.93	4.01	.0516	.0265
Yarding	Resp.	2.53	2.70	3.45	3.57	.0445	.0155
Office Salaries	Govt.	1.08	2.92	1.59	4.40	.0482	.0225
Office Salaries	Resp.	2.03	2.51	2.56	3.09	.0379	.0219
Office Expense	Govt.	.62	1.66	.89	2.35	.0276	.0108
Office Expense	Resp.	1.10	1.34	1.38	1.59	.0207	.0121
Business Getting, Etc.	Govt.	3.20	3.82	3.82	4.44	.0478	.....
Business Getting, Etc.	Resp.	3.96	4.16	4.01	4.15	.0438	.....
Administration & General	Govt.	.29	.78	.44	1.15	.0128	.0053
Administration & General	Resp.	.71	.68	.70	.71	.0082	.0084
Risk Expense	Govt.	.34	.33	.39	.35	.0044	.0043
Risk Expense	Resp.	.37	.36	.40	.39	.0049	.0043
Return on Capital	Govt.	.32	.33	.32	.33	.005	.005
Return on Capital	Resp.	.42	.43	.40	.43	.0052	.0044
Total Costs	Govt.	14.43	19.74	17.85	24.37	.2868	.1656
Total Costs	Resp.	17.57	20.43	21.65	23.40	.2879	.1518
Sheep							
Selling	Govt.	6.17	6.43	9.30	10.10	.0485	.1151
Selling	Resp.	5.95	8.33	11.43	12.83	.0861	.0523
Yarding	Govt.	1.01	2.75	2.64	4.63	.024	.0540
Yarding	Resp.	1.73	1.94	1.84	2.60	.0203	.0082
Office Salaries	Govt.	1.06	3.65	2.92	9.10	.0405	.0929
Office Salaries	Resp.	1.95	2.84	3.44	5.42	.0266	.0137
Office Expense	Govt.	.59	2.05	1.63	5.10	.0235	.0421
Office Expense	Resp.	1.03	1.53	1.80	2.96	.0152	.0084
Business Getting Expense	Govt.	3.54	3.87	5.67	7.10	.0278	.....
Business Getting Expense	Resp.	4.69	4.82	5.09	5.42	.0228	.....
Administration & General	Govt.	.59	1.64	.88	2.66	.0132	.0404
Administration & General	Resp.	1.42	1.29	.81	.75	.0047	.0043
Risk Expense	Govt.	.34	.33	.34	.36	.0019	.0052
Risk Expense	Resp.	.35	.35	.32	.36	.0020	.0022
Return on Capital	Govt.	.25	.26	.30	.32	.0024	.0073
Return on Capital	Resp.	.34	.34	.37	.40	.0020	.0021
Total Costs	Govt.	13.55	20.98	23.68	39.37	.1818	.3570
Total Costs	Resp.	17.46	21.44	25.10	30.74	.1797	.0912

* Per Head.

[fol. 1506] 39. Effect of Low-Volume Firms on Unit-Costs

(a) In the Chicago case, as well as in other market cases, the Government has assumed that low-volume firms are necessarily inefficient, therefore, it is presumed that if they were eliminated from the market and their volume was absorbed by the larger firms, the unit-costs for the market as-a-whole would be materially reduced and commission rates could be accordingly reduced. This is not correct.

(b) Evidence will be offered in this case, as in the St. Louis case, which will show that there is no correlation between volume and unit-costs, also that the market average unit-cost, including all the low-volume firms, is in nearly all rate classifications, at or below the 60% bulk-line.

(c) Furthermore, the respondents have tested the Government's claim by deducting from the market aggregate costs, the entire costs of handling cattle and calves, hogs, and sheep, respectively, in the case of firms which during the year 1932 handled less than 50 cars of cattle and calves, 100 cars of hogs, or 100 cars of sheep, and thus arrived at a new aggregate cost for the market which assumes that this volume could have been handled by the larger firms without additional expense. On the other hand, the commissions earned by low-volume firms have not been deducted from the total for the market, which assumes that the larger firms would have handled this business. The result of this calculation is that, the percent of loss for all commission firms during 1932 changes from 9.51% to 6.55%. There would still be a very considerable loss.

(d) Of course, the assumption that the business now handled by low-volume firms could be handled by the larger firms without additional costs to them, is obviously incorrect and impracticable, but the idea suggested in these cases by the Government was given the fullest opportunity to prove its claims in order that the results would be unquestionable.

40. Efficiency of Commission Men

(a) In my opinion, the term "efficiency" as applied to the livestock commission business should represent a prop-

erly balanced combination of (1) the commission man's ability to obtain the largest amount of proceeds for the shipper consistent with market conditions, and (2) his ability to conduct his business at reasonable costs consistent with the character of his business and the conditions under which he operates. A proper consideration of "efficiency" cannot be given if either of these factors is omitted.

(b) A great deal of testimony has been given in this case by men of unquestionable ability and integrity, both in and out of the commission business, and whose interests in this case are opposed to each other, acknowledging the well known fact that the Chicago market is the price-fixing market of the world and that the commission men and buyers on this market are necessarily of the very highest standard. Therefore, the commission men at Chicago are in a position of great responsibility which is not limited to, but necessarily insures, the interests of shippers to this market, and these shippers have every reason to confidently expect the utmost in proceeds for livestock which they ship to this market. There has been no testimony in this case indicating that anyone even questions the ability of the commission men at Chicago to obtain the largest amount of proceeds for their shippers, and the Government has not offered any evidence to dispute this fact.

(c) There has been testimony in this case, however, to the effect that the price of livestock breaks at intervals of five cents, and that a difference of five cents in the price amounts to more than the commissions paid by shippers, therefore, it is obvious that the commission man's ability to obtain the best price for livestock consigned to him is of [fol. 1507] greater importance than the amount of commissions. Accordingly, any downward adjustment made in commission rates at a time such as this, when the commission men are operating their businesses without profit, would lower the standard of ability required to obtain the largest amount of proceeds for the shipper, and impair the service generally.

(d) There is, therefore, no doubt as to the satisfactory existence of the first element of the commission man's ability, namely, to obtain the largest amount of proceeds for livestock consigned to him. And so we come to the second

element—the reasonable cost of rendering the service, which the respondents believe to be represented by the composite or market weighted average costs.

41. Market Average Costs

(a) There are approximately 100 respondents firms on the Chicago market operating under uniform commission rates prescribed by the Secretary of Agriculture. The consist and character of each firm's business is unlike that of any other firm, and this is true whether their business is considered as a whole, or separately as to species, or separately as to each mode of arrival under any species. They each have more or less cattle and calves, or hogs, or sheep, than others. They each have more or less of straight cars, mixed cars, drive-ins, or seconds than others, and they each have different grades or classes of livestock under each mode of arrival, a different number of cars-per-consignment, owners-per-car, head-per-car, drafts-per-car, etc., and all these factors are changing day by day and exerting a greater or lesser influence on the cost of rendering the service. This will be noted by reference to schedules Nos. 1, 2 and 3, which show the final cost results for each of the respondent firms in such a manner as to make this condition clear.

(b) In view of the complexity of this situation and the resulting inability to compare the performance or results of one firm with that of another, but realizing the necessity for embracing all of these firms in rate considerations because they are all subject to the uniform rates prescribed, there is no doubt whatever but that the best, if not the only reasonable basis for the determination and consideration of costs, is the weighted-average unit-cost for all the respondents.

(c) There are cases to be found in the 1932 cost statements where a respondent having a small volume of business expended an amount per-car in the handling of it which was greatly in excess of the commissions received, and certain witnesses in this case have been asked if, in such an instance, they believed that the commission rates should be increased to the point of covering such costs. I believe this question could quite properly be answered both

"yes" and "no". The answer "yes" would consider that although, through either over-conscientiousness or lack of volume, the commission man operated at a heavy loss, the shipper, nevertheless, did not have to pay for it although he received the benefit. I doubt if any such shippers would complain. The answer "no" would consider that if such instances carried enough weight they would influence the market-weighted-average-cost in rate making. However, it has already been proven that they do not carry such influence.

(d) Since it has been shown (1) that these commission men are highly efficient from the standpoint of proceeds obtained for livestock sold, (2) that this element of efficiency prevails among the low-volume as well as the high-volume firms, (3) that high-costs in low-volume firms does not carry sufficient weight to affect the costs upon which rates are fixed, (4) that high-costs in low-volume firms may be of benefit to those particular shippers, (5) that there is no correlation between volume and unit-costs, indicating that low-volume firms are just as efficient from a cost [fol. 1508] standpoint as high-volume firms, there remains no sound reason why the market-weighted-average-cost should not be considered the proper basis for rate-determinations, to whatever extent any costs may be so considered. By use of the market average, each firm finds its own level as to profits or losses, and the natural law of economics will operate to make whatever adjustments or eliminations may be necessary.

42. Government's Unfair Consideration of Business Getting Salaries

(a) Business getting and maintaining salaries as classified in cost statements merely represent a sub-division of salesmen's salaries covering that part of their time which is spent in the country (almost entirely on week-ends) for the purpose of assisting their patrons through the giving of advice as to feeding, marketing, etc., of livestock, and for the purpose of soliciting new business and maintaining existing business which could not otherwise be held. The costs shown under this heading merely represent an accounting classification of that part of the salesmen's salaries which would necessarily be incurred whether or not

there was any business getting activity at all, and further represents the commission man's method of putting to a useful purpose necessary salary expense which could not be avoided and which would not otherwise be productive.

(b) The Government, in previous cases, has taken advantage of the cost accounting necessities and treated business getting salaries for rate making purposes just as though they represented separate and additional expenses incurred for the specific purpose of business getting. Furthermore, the Government, after having taken advantage of this cost accounting classification and placed that part of salesmen's salaries "out on a limb", so to speak, proceed to cut the limb off as unnecessary business getting expense, but omit to restore these inseparable salary parts to their counterparts, thus leaving the commission man without sufficient income to maintain his selling organization. In this way, the Government's rate-making method or policy is highly unfair and impracticable and places even the most efficient commission man in an impossible situation.

43. Government's Unfair Method of Determining Reasonable Cost of Salesmanship

[fol. 1509] (f) With reference to this subject, particularly the Government's elimination of part of salesmen's salaries as unnecessary business getting expense, I would like to point to the same objectionable method employed by the Government in the preparation of statistics as to the number of cars of livestock actually sold during the year 1932. I refer to Government Exhibit No. 49, pages 280 to 282. It will be noted that the number of salesmen, buyers and yardmen are shown, then divided into the number of cars sold, the product presumably representing the number of cars handled per salesman, buyer, or yardman during the year 1932, but this is not a proper method and the result is misleading. Salesmen, for example, have various duties which must necessarily be performed before and after the actual "showing and selling" function, all of which are essentially an inseparable part of "selling". The salesman must look over his mail and review market

conditions before going into the yards, he may have to assist somewhat in receiving the livestock, he assists with the weighing, he writes letters covering the sales he has made, and he makes country trips. These duties, in the aggregate, consume a very considerable part of his time but, for cost-accounting purposes, are mostly charged to sub-classifications of the selling service.

(g) The Government takes advantage of this situation and, if a salesman devoted but 55% of his time to the actual "showing and selling" function of selling, and the other 45% to other essential salesman's duties, the Government considers that he is only 55% of a salesman and he has been so counted in arriving at the number of cars of livestock he sold as indicated by Government Exhibit No. 49 at pages 280 to 282. This practice assumes that a commission man need only employ 55% of a whole salesman for selling even though all his time is required for various selling activities. The same method is applied to yardmen. [fol. 1510] Again I say that the Government's method or policy is highly unfair and impractical and places even the most efficient commission man in an impossible situation.

(h) In this connection, the respondents have prepared corrected information as to the number of cars of livestock actually sold by the salesmen of each firm during the year 1932, treating a salesman as a complete individual instead of assuming that 45%, or some other percent, of him can be eliminated through the processes of accounting. This data may be found on schedules Nos. 24-a, 24-b and 24-c. They show that, during the entire year 1932, there was an average of 394 cars of cattle and calves, 385 cars of hogs, and 465 cars of sheep, sold per salesman. In the case of cattle and calves, there were 16 firms who handled more than the average and 50 firms who handled less than the average of 394 cars. In the case of hogs, there were 29 firms who handled more than the average and 31 firms who handled less than the average of 385 cars. In the case of sheep, there were 4 firms handled more than the average and 16 firms who handled less than the average of 465 cars.

(i) Also, in the same connection, the respondents have prepared an analysis of daily sales made by the 19 time-

study firms during September, October and November, 1932. These analyses may be found on schedules Nos. 25-a to 25-f. Here, again, we have actual facts in support of the resistence of witnesses who were asked to base estimates of their selling capacity on ideal or average conditions. These schedules show that there is no such thing as an average or typical day on which an estimate could be based, and they show that the fabulous estimates extracted from witnesses as to their selling capacity are mere ideals, have no relation to the actual practical experience of record, and can serve no proper purpose in rate-making except to fulfill the purposes of predetermined standards.

44. Government's Impractical and Unfair Basis for Measuring the Capacity of Salesmen

(a) The Government's consideration of and allowances for "salesmanship" have been based on the "number of carlots" as a unit for measuring the capacity of salesmen. The records and testimony in this case clearly indicate that this method is grossly erroneous and unfair. A "carlot" is not the unit of service rendered by commission men in the sale of livestock, because carlots vary in the amount of effort and expense required to render the service according (1) to the number of "drafts" and (2) according to the sizes of "drafts" into which the carlot must be broken before it can be sold and passed over the scale.

(b) Therefore, the proper basis for considering the capacity of salesmen is the number of drafts and the sizes of drafts which must be handled and sold, in addition to which consideration would have to be given to the market and other conditions as indicated by the testimony. A carlot of say 20 head of cattle sold in 20 drafts would probably consume two or three times as much effort to handle and sell as the same carlot would if it could be handled and sold in but one draft.

(c) The commission man or salesman has little or no control over the number or sizes of drafts because he must sort the livestock according to packer's demands or purchasing practices so as to obtain the highest price for the shippers, and in doing so he must handle, sell and weigh each draft separately.

[fol. 1511] (d) It is also obvious that the number and sizes of drafts not only causes a wide variation in the commission man's effort to sell a "carlot" of livestock, but indicates the variation in the amount of service received by shippers which is not considered under the present "carlot" or "head" rate. Therefore, the carlot basis is not only unfair to the commission man but causes inequalities between shippers so that the shipper whose livestock is sold in "wholesale" drafts is required to pay part of the cost of handling the livestock of other shippers sold in "retail" drafts.

(e) The livestock business is one of the few, if not the only, business which does not recognize the principals of "wholesale" and "retail" selling. If the Government's method is pursued in this as in previous cases, these fundamentals of business practice which are universally employed will continue to be ignored, and the results will operate unfairly to the shippers as well as the commission men.

(f) There are volumes of testimony in this case based on the Government's own analyses of the account sales showing the greatly increased number of drafts which the commission men have been required to handle and sell during the last few years since the present rates were set by arbitration, and which also show the wide variation between the consists of the "carlots" with respect to drafts or effort required. It is clearly evident that the old-time carlot is a relic of the past and that the Government should change its obsolete methods to conform to these changed conditions.

45. Government's Unfair Method of Considering "Management"

(a) Another unfair method employed by the Government in rate-making is this: More than 95% of the firms operating on the Chicago market, and on other markets, are owner-managed, and in a larger per cent of the firms the owner-manager is also an active salesman. However, the Government disregards the condition existing in 95% of the firms, and proceeds to establish an allowance for "Management" separate from "Selling". Through this process, the allowance made in the case of owner-manager-salesmen for "Selling" is reduced to the same level as the allowance for employed-salesmen, then the separate allowance for "Manage-

ment" is such as to account for but a very small fraction of the reduction.

(b) Here is another case where the Government has divided an individual into separate parts, getting those parts which involve the most cost out "on a limb" so to speak, and then proceeding to cut off the limb, leaving the commission man in an incomplete and impossible situation. Since less than 5% of the firms have employee-managers, and it is not practicable for the other 95% to be so managed, the method followed by the Government is obviously unfair, and takes advantage of a practical situation through the application of technical theory.

46. Analysis of Volume of Business Handled During the Year 1932

(a) Schedules Nos. 13 to 18 inclusive show the volume of business handled during the year 1932 in various ways, namely, "Number of Head", "Number of Cars", "Number of Decklots", "Number of Drafts", "Number of Account Sales and Account Purchases", and "Amount of Commissions". On these schedules, the volume is shown sepa- [fol. 1512] rately for each respondent, by species and modes of arrival. All of these figures were taken from Government Exhibit No. 49, except the "Number of cars" for drive-ins and seconds, which were corrected on the basis of supplemental information furnished by the Government.

(b) Schedule No. 19 shows the daily receipts at Union Stock Yards, Chicago, Illinois, during the year 1932. This schedule shows the receipts separately for "cattle", "calves", "hogs" and "sheep" classified as between railline, drive-ins, throughs, and directs. All of these figures were supplied to respondents by the Union Stock Yards and Transit Co. They were assembled to indicate the drastic and irregular fluctuation in receipts from day to day, particularly within each week. These fluctuations are, of course, entirely beyond the possibility of influence or control by commission men, yet they have a greater influence upon the costs of operations than any other single factor because the commission man must be organized at all times to handle weekly peaks of volume promptly and efficiently. This creates considerable slack on the light days of the week and would create more if the commission man did not

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utilize the time for country trips, getting out circulars, etc. Eliminating Sundays and Holidays from consideration, it will be noted that cattle receipts fluctuate from 5 to 27,640 head, calves from 6 to 6,007 head, hogs from 2,238 to 80,234 head, and sheep from 615 to 42,829 head daily.

47. Analysis of Volume of Business Received by Months From 1923 to 1932

(a) Schedule No. 20 shows the monthly receipts at Union Stock Yards, Chicago, Illinois, during the years 1923 to 1932 both inclusive. This schedule shows these receipts separately for "cattle", "calves", "hogs" and "sheep" classified as between rail-line, drive-ins, throughs, and directs. These figures also were furnished to respondents by the Union Stock Yards and Transit Co., and were prepared to indicate the monthly and seasonal fluctuations in volume. The monthly receipts of cattle fluctuated from 136,890 to 335,607 head, calves from 27,286 to 93,835 head and hogs from 377,165 to 1,436,029.

48. Analysis of Volume of Business Received From 1865 to 1932

(a) Schedule No. 21 shows the annual receipts at Union Stock Yards, Chicago, Illinois, during the years 1865 to 1932, both inclusive. This schedule shows these receipts separately for "cattle", "calves", "hogs" and "sheep", also classified as between rail-line and drive-ins. The "throughs" and "directs" are included in rail-line because they could not be segregated prior to 1919, and schedule No. 20 shows them separately as far back as 1923. All of these figures were supplied to respondents by the Union Stock Yards and Transit Co.

(b) Cattle receipts reached a peak of 3,789,922 head in 1918. In 1923 receipts were 3,157,100 head. Since then they have declined to 2,005,745 in 1932. Therefore, since the present tariff rates were given effect cattle receipts have fallen off more than 36%.

(c) Calf receipts reached a peak of 847,762 head in 1925. In 1923 receipts were 760,751 head. Since then they have declined to 446,842 head. Therefore, since the present commission rates became effective calf receipts have dropped more than 41%.

(d) Hog receipts reached a peak of 10,460,134 in 1923 and have since dropped to 6,602,237 in 1932. When the "directs" are deducted from these figures, the 1923 receipts are 9,983,984 head and 1932 receipts are 2,347,497 head. Therefore, it will be seen that receipts by commission men have fallen nearly 78% since 1923 when present tariff rates became effective.

[fol. 1513] (e) Sheep receipts reached a peak of 6,055,546 head in 1912. In 1923 receipts were 4,097,833 head. Since then they have declined to 3,922,185 in 1932, or but 4.5% since present tariff rates went into effect.

(f) The per cent of "drive-ins" to the total business for each year as shown on schedule No. 21 are inclined to be misleading because, as previously explained, the "directs" are included in rail-line and total receipts. In order that the rapidly increasing volume of "drive-in" business may be more clearly noted, I have revised the per cents for the years 1923 and 1932, excluding "directs". In the case of "cattle" the per cent of drive-ins increased from .52% in 1923 to 15.18% in 1932, "calves" increased from .63% in 1923 to 21.91% in 1932, "hogs" increased from .63% in 1923 to 25.56% in 1932, and "sheep" drive-ins increased from .17% in 1923 to 9.66% in 1932.

[fol. 1514] (1) Exhibit No. 18 consists of a series of schedules Nos. 1 to 15, inclusive, which have been prepared by me as Consulting Accountant for the Chicago Live Stock Exchange, on behalf of its members, representing statistics and cost statements covering their operations during the year 1931. These schedules correspond with those already submitted by me for the year 1932,—both as to their form and to the methods employed in arriving at the figures thereon, with but one exception.

(2) This exception relates to insurance expense accruals covered by schedules Nos. 7, 7a, and 7c. These accruals represent the differences between the amount of full-coverage insurance premiums for the year 1931 and the amount of insurance premiums actually paid during that year. These differences were added to the Government's costs by respondents in order that this class of expense might be given consideration in the determination of commission rates. For the year 1932, the Government made these ac-

cruals and included them in its costs, making it unnecessary for the respondents to do so.

(3) The differences between the Government's aggregate costs for all Chicago Live Stock Exchange firms and the respondent's aggregate costs for 1931, are:

Government costs	$3,182,808.29	
Interest on Capital	47,893.00	
Government aggregate costs		$3,230,701.29
Owners' salary appraisal adjustments (Sched. 6)	$254,911.19	
Administration salaries not charged to branch Schedule No. 3	12,112.00	
Insurance exchange accruals (Schedule 7)	25,083.31	
Interest on Capital in excess of Government's allowance (Schedule No. 8)	14,527.00	
Total additions		306,633.50
Respondents aggregate costs		$3,537,334.79

(4) For the year 1931, the Government did not distribute the costs to "modes of arrival", as it did for the year 1932, therefore, comparison of the Government's and the respondents' costs cannot be made for 1931, as was done for 1932. The respondents, however, prepared detailed cost statements for 1931 as well as 1932 and a comparison of their costs by "modes of arrival" is attached hereto. This comparison indicates that:

(5) The number of carlots of cattle and calves handled during 1932 was 87,789 as compared with 102,027 during 1931, a decrease of 14,238 or 13.96%. The amount of commissions for cattle and calves during 1932 was $1,746,754 as compared with $2,014,362 during 1931, a decrease of $267,608 or 13.29%. The cost of handling cattle & calves during 1932 was $2,225,694 as compared with $2,054,424 during 1931, a decrease of $171,270 or 7.70%. Commissions per-car

for selling cattle & calves during 1932 were $20.03 as compared with $19.91 during 1931, an increase of $.12 or .60%. However, as a result of inability to reduce costs to as great an extent as the volume declined, the unit-cost per-car for selling cattle and calves during 1932 was $23.62 as compared with $21.85 during 1931, an increase of $1.77 or 8.10%.

[fol. 1515] (6) The number of carlots of hogs handled during 1932 was 44,059 as compared with 60,059 during 1931, a decrease of 16,068 or 26.72%. The amount of commissions for hogs during 1932 was $890,728 as compared with $1,073,313 during 1931, a decrease of $182,585 or 17.01%. The cost of handling hogs during 1932 was $895,-687 as compared with $1,052,204 during 1931, a decrease of $156,687 or 14.87%. Commissions per-car for selling hogs during 1932 were $20.34 as compared with $18.00 during 1931, an increase of $2.34 or 13.00%. However, as a result of inability to reduce costs to as great an extent as the volume declined, the unit-cost per-car for selling hogs during 1932 was $20.39 as compared with $17.60 during 1931, an increase of $2.79 or 15.85%.

(7) The number of carlots of sheep handled during 1932 was 11,583 as compared with 15,740 during 1931, a decrease of 4,157 or 26.41%. The amount of commissions for sheep during 1932 were $241,222 as compared with $296,416 during 1931, a decrease of 55,194 or 18.62%. The cost of handling sheep during 1932 was $231,215 as compared with $259,437 during 1931, a decrease of $28,215 or 10.88%. Commissions per car for selling sheep during 1932 were $21.20 as compared with $19.25 during 1931, an increase of $1.95 or 10.12%. However, as a result of inability to reduce costs to as great an extent as the volume declined, the unit-cost per-car for selling sheep during 1932 was $20.30 as compared with $16.95 during 1931, an increase of $3.35 or 19.76%.

(8) The number of carlots of all species handled during 1932 was 143,431 as compared with 177,894 during 1931, a decrease of 34,463 or 18.37%. The amount of commissions for all species during 1932 was $2,878,704 as compared with $3,384,091 during 1931, a decrease of $505,387 or 14.93%. The cost of handling all species during 1932 was $3,181,326 as compared with $3,537,335, a decrease of $356,009 or 10.88%. Commissions per car for all species during 1932

were $20.07 as compared with $19.02 during 1931, an increase of $1.05 or 5.52%. However, as a result of inability to reduce costs to as great an extent as the volume declined, the unit cost per-car for all species during 1932 was $22.18 as compared with $19.88 during 1931, an increase of $2.30 or 11.57%.

(9) During the year 1932 the average result of operations of all respondents was a loss of 9.51% as compared with 4.33% loss during 1931, in spite of the fact that costs were reduced 10.88%.

(10) Although the total number of carlots handled during 1932 declined 18.37% as compared with 1931, the equivalent carlots of "drive-ins" increased from 15,530 in 1931 to 22,146 in 1932, or 42.60%. Since "drive-ins" are considerably more costly to handle, this situation accounts in part for the inability of commission men to reduce their costs to as great an extent as the volume declined. The additional drafts and account sales caused during 1932 by the increased "drive-ins" was sufficient to increase the total drafts handled about 7% and the total account sales handled about 8%.

(11) Also, in spite of the decrease in the number of carlots handled during 1932 as compared with 1931, the number of drafts per-car (considering rail-line shipments only) increased from 5.27 to 5.84, or 10.81%.

(12) As indicated by volumes of testimony in this case, [fol. 1516] the number of "drive-ins" and the number of "drafts" have increased very greatly since the present commission rates were set by arbitration in 1923. This is confirmed by the 1931-1932 comparisons. These factors, although exerting a very considerable influence on the commission man's costs and the service received by shippers, are apparently ignored by the Government in its method of determining what it calls reasonable rates.

(Here follows 1 photo, folio 1517)

E: The expense, and the number of head, etc. shown in MIXED columns relate to the number of that particular species received in Mixed Cars, not to the total head all species so received.

NOTE: BLACK indicates Increase.
RED indicates Decrease.

BEFORE THE SECRETARY OF AGRICU
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 402

COMPARISON OF RESPONDENTS' 1931 AND 1932 CO

	CATTLE AND CALVES								HOG
	SELLING SERVICE							BUYING SERVICE	SELLING SER
	STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE INS	SECONDS	TOTAL		STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O
	A	B	C	D	E	F	G	H	I	J	K	L
SELLING & BUYING – 1931	425 110	177 763	44 563	89 264	136 172	127 055	999 927	41 998	117 927	113 248	23 051	55 338
SELLING & BUYING – 1932	426 938	161 253	32 777	67 325	194 008	89 683	971 985	23 202	92 845	92 462	17 679	41 296
INCREASE OR DECREASE	1 828	16 510	11 786	21 938	57 836	37 372	27 942	18 796	25 082	[illegible]	5 372	14 042
YARDING – 1931	131 597	48 548	12 653	23 863	33 322	18 141	268 124	11 685	43 833	43 545	9 330	19 923
YARDING – 1932	106 823	38 166	7 680	13 877	45 664	13 659	225 869	4 790	36 288	30 194	6 966	15 621
INCREASE OR DECREASE	24 774	10 382	4 973	9 986	12 342	4 482	42 255	6 895	7 545	13 351	2 364	4 302
OFFICE WORK – 1931	159 526	74 988	13 296	30 002	43 656	38 218	359 686	11 091	59 056	59 844	9 729	24 165
OFFICE WORK – 1932	139 809	63 303	9 111	21 298	60 292	37 314	331 127	8 773	45 119	43 114	7 943	20 376
INCREASE OR DECREASE	19 717	11 685	4 185	8 704	16 636	904	28 559	2 318	13 937	16 730	1 786	3 789
BUSINESS GETTING – 1931	236 212	71 043	14 092	22 646	30 601	–	374 594	–	78 952	68 095	10 887	23 128
BUSINESS GETTING – 1932	205 639	63 837	9 816	16 990	52 351	–	348 633	–	57 022	46 549	8 104	18 114
INCREASE OR DECREASE	30 573	7 206	4 276	5 656	21 750	–	25 961	–	21 930	21 546	2 783	5 014
ADMINISTRATION & GENERAL – 1931	71 498	18 742	3 900	5 323	8 479	12 534	120 476	2 475	23 525	17 893	3 505	6 176
ADMINISTRATION & GENERAL – 1932	58 762	14 761	2 322	3 711	13 162	10 948	103 666	1 935	15 616	11 809	2 216	4 762
INCREASE OR DECREASE	12 736	3 981	1 578	1 612	4 683	1 586	16 810	540	7 909	6 084	1 289	1 414
RETURN ON CAPITAL – 1931	19 375	5 734	1 089	1 707	2 774	3 714	34 393	1 245	7 703	6 780	1 012	2 213
RETURN ON CAPITAL – 1932	17 537	5 374	808	1 371	4 715	3 691	33 496	948	6 073	4 803	815	1 859
INCREASE OR DECREASE	1 838	360	281	336	1 941	23	897	297	1 630	1 977	197	354
AGGREGATE COSTS – 1931	1 043 318	396 818	89 593	172 805	255 004	199 662	2 157 200	68 494	330 996	309 405	57 514	130 943
AGGREGATE COSTS – 1932	955 508	346 694	62 514	124 573	370 192	155 295	2 014 776	39 648	252 963	228 931	43 723	102 028
INCREASE OR DECREASE	87 810	50 124	27 079	48 232	115 188	44 367	142 424	28 846	78 033	80 474	13 791	28 915
COMMISSIONS – 1931	1 123 442	374 079	70 554	122 063	165 439	109 578	1 965 155	49 207	354 126	333 520	57 166	135 122
COMMISSIONS – 1932	919 251	305 767	46 115	83 915	255 803	97 976	1 708 827	37 927	256 125	228 055	42 739	101 707
INCREASE OR DECREASE	204 191	68 312	24 439	38 148	90 364	11 602	256 328	11 280	98 001	105 465	14 427	33 415
PROFIT OR LOSS – 1931	80 124	22 739	19 039	50 742	89 565	90 084	192 045	19 287	23 130	24 115	348	4 179
PROFIT OR LOSS – 1932	36 257	40 927	16 399	40 658	114 389	57 317	305 949	1 721	3 162	876	984	321
INCREASE OR DECREASE	116 381	18 188	2 640	10 084	24 824	32 767	113 904	17 566	19 968	24 991	636	4 500
NUMBER OF CARLOTS – 1931	56 939	15 924	3 088	4 661	7 263	10 840	98 715	3 312	21 447	17 903	2 899	6 026
NUMBER OF CARLOTS – 1932	46 016	13 008	2 018	3 289	11 227	9 747	85 305	2 484	14 400	11 203	2 020	4 360
INCREASE OR DECREASE	10 923	2 916	1 070	1 372	3 964	1 093	13 410	828	7 047	6 700	879	1 666
COST PER CARLOT – 1931	18.32	24.92	29.01	37.07	35.11	18.42	21.85	20.68	15.43	17.28	19.84	21.73
COST PER CARLOT – 1932	20.76	26.65	30.98	37.88	32.97	15.93	23.62	15.96	17.57	20.43	21.65	23.40
INCREASE OR DECREASE	2.44	1.73	1.97	.81	2.14	2.49	1.77	4.72	2.14	3.15	1.81	1.67

YARDING – 1931	131 597	48 548	12 653	23 863	33 322	18 141	268 124	11 685	43 833	43 545	9 330	19 923	27 627
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BUSINESS GETTING – 1932	205 639	63 837	9 816	16 990	52 351	–	348 633	–	57 022	48 549	8 104	18 114	36 287
INCREASE OR DECREASE	30 573	7 206	4 276	5 656	21 750	–	25 961	–	21 930	21 546	2 783	5 014	10 722
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ADMINISTRATION & GENERAL – 1932	58 762	14 761	2 322	3 711	13 162	10 948	103 666	1 935	15 616	11 809	2 216	4 762	10 823
INCREASE OR DECREASE	12 736	3 981	1 578	1 612	4 683	1 586	16 810	540	7 909	6 084	1 289	1 414	3 198
RETURN ON CAPITAL – 1931	19 375	5 734	1 089	1 707	2 774	3 714	34 393	1 245	7 703	6 780	1 012	2 213	2 799
RETURN ON CAPITAL – 1932	17 537	5 374	808	1 371	4 715	3 691	33 496	948	6 073	4 803	815	1 859	4 310
INCREASE OR DECREASE	1 838	360	281	336	1 941	23	897	297	1 630	1 977	197	354	1 511
AGGREGATE COSTS – 1931	1 043 318	396 818	89 593	72 805	255 004	199 662	2 157 200	68 494	330 996	309 405	57 514	130 943	169 094
AGGREGATE COSTS – 1932	955 508	346 694	62 514	24 573	370 192	155 295	2 014 776	39 648	252 963	228 931	43 723	102 028	238 292
INCREASE OR DECREASE	87 810	50 124	27 079	48 232	115 188	44 367	142 424	28 846	78 033	80 474	13 791	28 915	69 198
COMMISSIONS – 1931	1 123 442	374 079	70 554	122 063	165 439	109 578	1 965 155	49 207	354 126	333 520	57 166	135 122	150 903
COMMISSIONS – 1932	919 251	305 767	46 115	93 915	255 803	97 976	1 708 827	37 927	256 125	228 055	42 739	101 707	238 433
INCREASE OR DECREASE	204 191	68 312	24 439	28 148	90 364	11 602	256 328	11 280	98 001	105 465	14 427	33 415	87 530
PROFIT OR LOSS – 1931	80 124	22 739	19 039	50 742	89 565	90 084	192 045	19 287	23 130	24 115	348	4 179	18 191
PROFIT OR LOSS – 1932	36 257	40 927	16 399	40 658	114 389	57 317	305 949	1 721	3 163	876	984	321	141
INCREASE OR DECREASE	116 381	18 188	2 640	10 084	24 824	32 767	113 904	17 566	19 968	24 991	636	4 500	18 332
NUMBER OF CARLOTS – 1931	56 939	15 924	3 088	4 661	7 263	10 840	98 715	3 312	21 447	17 903	2 899	6 026	7 273
NUMBER OF CARLOTS – 1932	46 016	13 008	2 018	3 289	11 227	9 747	85 305	2 484	14 400	11 203	2 020	4 360	9 890
INCREASE OR DECREASE	10 923	2 916	1 070	1 372	3 964	1 093	13 410	828	7 047	6 700	879	1 666	
COST PER CARLOT – 1931	18.32	24.92	29.01	37.07	35.11	18.42	21.85	20.68	15.43	17.28	19.84	21.73	23.25
COST PER CARLOT – 1932	20.76	26.65	30.98	37.88	32.97	15.93	23.62	15.96	17.57	20.43	21.65	23.40	24.09
INCREASE OR DECREASE	2.44	1.73	1.97	.81	2.14	2.49	1.77	4.72	2.14	3.15	1.81	1.67	.84
COMMISSIONS PER CARLOT – 1931	19.73	23.49	22.85	26.19	22.78	10.11	19.91	14.86	16.51	18.63	19.72	22.42	20.75
COMMISSIONS PER CARLOT – 1932	19.98	23.51	22.85	25.51	22.78	10.05	20.03	15.27	17.79	20.36	21.16	23.33	24.11
INCREASE OR DECREASE	.25	.02	–	.68	–	.06	.12	.41	1.28	1.73	1.44	.91	3.36
PROFIT OR LOSS PER CARLOT – 1931	1.41	1.43	6.16	10.88	12.33	8.31	1.94	5.82	1.08	1.35	.12	.69	2.50
PROFIT OR LOSS PER CARLOT – 1932	.78	3.14	8.13	12.37	10.19	5.88	3.59	69	.22	.07	.49	.07	.02
INCREASE OR DECREASE	2.19	1.71	1.97	1.49	2.14	2.43	1.65	5.13	.86	1.42	.37	.76	2.52

NOTE: "SELLING EXPENSE" FOR 1931 WAS INCLUDED IN "YARDING EXPENSE" AND CANNOT BE SEGREGATED. FOR THE PURPOSE OF THIS COMPARISON, THE "SELLING EXPENSE" FOR 1932 HAS ALSO BEEN INCLUDED UNDER "YARDING EXPENSE" ALTHOUGH THE 1932 COST STATEMENT PROPERLY SHOWS IT UNDER "SELLING & BUYING".

ORE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 402

1152-F

ISON OF RESPONDENTS' 1931 AND 1932 COSTS.

	HOGS								SHEEP								TOTAL ALL SPECIES
	SELLING SERVICE							BUYING SERVICE	SELLING SERVICE							BUYING SERVICE	
	STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE INS	SECONDS	TOTAL		STRAIGHT S/O	STRAIGHT P/O	MIXED S/O	MIXED P/O	DRIVE INS	SECONDS	TOTAL		
	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y
98	117 927	113 248	23 051	55 338	72 650	21 242	403 456	9 011	45 827	14 302	2 360	5 208	13 736	2 660	84 093	10 560	1 549 045
02	92 845	92 462	17 679	41 296	101 547	12 153	357 982	5 600	44 665	12 758	2 780	4 224	17 417	2 304	84 148	5 324	1 448 241
26	25 082		5 372	14 042	28 897	9 089	45 474	3 411	1 162	1 544	420	984	3 681	356	55	5 236	100 804
85	43 833	43 545	9 330	19 923	27 627	4 680	148 938	1 991	16 363	4 882	651	1 283	2 960	335	26 474	1 665	458 877
90	36 288	30 194	6 966	15 621	36 834	2 211	128 114	501	12 973	2 976	446	854	4 104	363	21 716	803	381 793
25	7 545	13 351	2 364	4 302	9 207	2 469	20 824	1 490	3 390	1 906	205	429	1 144	88	4 758	862	77 084
91	59 056	59 844	9 729	24 165	32 828	8 170	193 792	2 847	24 220	9 138	1 482	3 152	6 470	1 603	46 065	3 826	617 307
73	45 119	43 114	7 943	20 376	48 491	4 857	169 900	1 560	22 397	6 691	1 273	2 757	8 455	973	42 546	3 151	557 057
18	13 937	16 730	1 786	3 789	15 663	3 313	23 892	1 287	1 823	2 447	209	395	1 985	630	3 519	675	60 250
	78 952	68 095	10 887	23 128	25 565	–	206 627	–	35 618	9 820	1 245	1 781	4 334	–	52 798	–	634 019
	57 022	46 549	8 104	18 114	36 287	–	166 076	–	35 219	7 380	1 238	1 783	4 606	–	50 226	–	564 935
	21 930	21 546	2 783	5 014	10 722	–	40 551	–	399	2 440	7	2	272	–	2 572	–	69 084
75	23 525	17 893	3 505	6 176	7 625	4 220	62 944	.535	19 354	4 402	449	512	1 467	731	26 915	2 322	215 667
85	15 616	11 809	2 216	4 762	10 823	1 805	47 031	.283	13 296	2 511	273	365	1 369	285	18 099	1 187	172 201
40	7 909	6 084	1 289	1 414	3 198	2 415	15 913	252	6 058	1 891	176	147	96	446	8 816	1 135	43 466
45	7 703	6 780	1 012	2 213	2 799	1 217	21 724	.339	2 775	732	119	152	357	166	4 301	418	62 420
48	6 073	4 803	815	1 859	4 310	626	18 486	154	2 560	524	90	130	413	91	3 808	207	57 099
97	1 630	1 977	197	354	1 511	591	3 238	185	215	208	29	22	56	75	493	211	5 321
94	330 996	309 405	57 514	130 943	169 094	39 529	1 037 481	14 723	144 157	43 276	6 306	12 088	29 324	5 495	240 646	18 791	3 537 335
48	252 963	228 931	43 723	102 028	238 292	21 652	887 589	8 098	131 170	32 840	6 100	10 113	36 364	4 016	220 543	10 672	3 181 326
46	78 033	80 474	13 791	28 915	69 198	17 877	149 892	6 625	13 047	10 436	206	1 975	7 040	1 479	20 103	8 119	356 009
07	354 126	333 580	57 166	135 122	150 903	30 409	1 061 246	12 067	173 175	48 540	10 226	16 171	22 348	2 882	273 342	23 074	3 384 091
27	256 125	228 055	42 739	101 707	238 433	18 129	885 188	5 540	142 001	31 619	7 446	12 456	35 044	1 791	230 357	10 865	2 878 704
80	98 001	105 465	14 427	33 415	87 530	12 280	176 058	6 527	31 174	16 921	2 780	3 715	12 696	1 091	42 985	2 209	505 387
87	23 130	24 115	348	4 179	18 191	9 120	23 765	2 656	29 018	5 264	3 920	4 083	6 976	2 613	32 696	4 283	153 244
21	3 162	876	984	321	141	3 523	2 401	2 558	10 891	1 221	1 346	2 343	1 320	2 225	9 814	193	302 627
66	19 968	24 991	636	4 500	18 332	5 597	26 166	98	18 127	6 485	2 574	1 740	5 656	388	22 882	4 090	149 378
12	21 447	17 903	2 899	6 026	7 273	3 400	58 948	1 179	9 524	2 382	330	421	994	550	14 201	1 539	177 894
84	14 400	11 203	2 020	4 360	9 890	1 648	43 521	538	7 511	1 532	243	329	1 029	221	10 865	718	143 431
88	7 047	6 700	879	1 666		1 752	15 427	641	2 013	850	87	92	35	329	3 336	821	34 463
.68	15.43	17.28	19.84	21.73	23.25	11.63	17.60	12.49	15.14	18.17	19.11	28.71	29.50	9.99	16.95	12.21	19.88
.96	17.57	20.43	21.65	23.40	24.09	13.15	20.39	15.05	17.46	21.44	25.10	30.74	35.34	18.17	20.30	14.86	22.18
.72	2.14	3.15	1.81	1.67	.84	1.52	2.79	2.56	2.32	3.27	5.99	2.03	5.84	8.18	3.35	2.65	2.30
.86	16.51	18.63	19.72	22.42	20.75	8.94	18.00	10.23	18.18	20.38	30.99	38.41	22.48	5.24	19.25	14.99	19.02
.27	17.79	20.36	21.16	23.33	24.11	11.09	20.34	10.30	18.91	20.64	30.64	37.86	34.06	8.10	21.20	15.13	20.07
.41	1.28	1.73	1.44	.91	3.36	2.06	2.34	.07	.73	.26	.35	.55	11.58	2.86	1.95	.14	1.05
								2.26	3.04	2.21	11.88	9.70	7.02	4.75	2.30	2.78	.86

2	92 845	92 462	17 679	41 296	101 547	12 153	357 982	5 600	44 665	12 758	2 780	4 224	17 417	2 304	84 148	5 324	1 448 241
5	25 082	2[illegible]	5 372	14 042	28 897	9 089	45 474	3 411	1 162	1 544	420	984	3 681	356	55	5 236	100 804
5	43 833	43 545	9 330	19 923	27 627	4 680	148 938	1 991	16 363	4 882	651	1 283	2 960	335	26,474	1 665	458 877
0	36 288	30 194	6 966	15 621	36 834	2 211	128 114	501	12 973	2 976	446	854	4 104	363	21 716	803	381 793
5	7 545	13 351	2 364	4 302	9 207	2 469	20 824	1 490	3 390	1 906	205	429	1 144	88	4 758	862	77 084
1	59 056	59 844	9 729	24 165	32 828	8 170	193 792	2 847	24 220	9 138	1 482	3 152	6 470	1 603	46 065	3 826	617 307
3	45 119	43 114	7 943	20 376	48 491	4 857	169 900	1 560	22 397	6 691	1 273	2 757	8 455	973	42 546	3 151	557 057
3	13 937	16 730	1 786	3 789	15 663	3 313	23 892	1 287	1 823	2 447	209	395	1 985	630	3 519	675	60 250
	78 952	68 095	10 887	23 128	25 565	–	206 627	–	35 618	9 820	1 245	1 781	4 334	–	52 798	–	634 019
	57 022	46 549	8 104	18 114	36 287	–	166 076	–	35 219	7 380	1 238	1 783	4 606	–	50 226	–	564 935
	21 930	21 546	2 783	5 014	10 722	–	40 551	–	399	2 440	7	2	272	–	2 572	–	69 084
5	23 525	17 893	3 505	6 176	7 625	4 220	62 944	535	19 354	4 402	449	512	1 467	731	26 915	2 322	215 667
5	15 616	11 809	2 216	4 762	10 823	1 805	47 031	283	13 296	2 511	273	365	1 369	285	18 099	1 187	172 201
0	7 909	6 084	1 289	1 414	3 198	2 415	15 913	252	6 058	1 891	176	147	98	446	8 816	1 135	43 466
5	7 703	6 780	1 012	2 213	2 799	1 217	21 724	339	2 775	732	119	152	357	166	4 301	418	62 420
8	6 073	4 803	815	1 859	4 310	626	18 486	154	2 560	524	90	130	413	91	3 808	207	57 099
7	1 630	1 977	197	354	1 511	591	3 238	185	215	208	29	22	56	75	493	211	5 321
4	330 996	309 405	57 514	130 943	169 094	39 529	1 037 481	14 723	144 157	43 276	6 306	12 088	29 324	5 495	240 646	18 791	3 537 335
8	252 963	228 931	43 723	102 028	238 292	21 652	887 589	8 098	131 110	32 840	6 100	10 113	36 364	4 016	220 543	10 672	3 181 326
5	78 033	80 474	13 791	28 915	69 198	17 877	149 892	6 625	13 047	10 436	206	1 975	7 040	1 479	20 103	8 119	356 009
7	354 126	333 520	57 166	135 122	150 903	30 409	1 061 246	12 067	173 175	48 540	10 226	16 171	22 348	2 882	273 342	23 074	3 384 091
7	256 125	228 055	42 739	101 707	238 433	18 129	885 188	5 540	142 001	31 619	7 446	12 456	35 044	1 791	230 357	10 865	2 878 704
0	98 001	105 465	14 427	33 415	87 530	12 280	176 058	6 527	31 174	16 921	2 780	3 715	12 696	1 091	42 985	2 209	505 387
7	23 130	24 115	348	4 179	18 191	9 120	23 765	2 656	29 018	5 264	3 920	4 083	6 976	2 613	32 696	4 283	153 244
1	3 162	876	984	321	141	3 523	2 401	2 558	10 891	1 221	1 346	2 343	1 320	2 225	9 814	193	302 622
68	19 968	24 991	636	4 500	18 332	5 597	26 166	98	18 127	6 485	2 574	1 740	5 656	388	22 882	4 090	149 378
2	21 447	17 903	2 899	6 026	7 273	3 400	58 948	1 179	9 524	2 382	330	421	994	550	14 201	1 539	177 894
4	14 400	11 203	2 020	4 360	9 890	1 648	43 521	538	7 511	1 532	243	329	1 029	221	10 865	718	143 431
8	7 047	6 700	879	1 666		1 752	15 427	641	2 013	850	87	92	35	329	3 336	821	34 463
58	15.43	17.28	19.84	21.73	23.25	11.63	17.60	12.49	15.14	18.17	19.11	28.71	29.50	9.99	16.95	12.21	19.88
36	17.57	20.43	21.65	23.40	24.09	13.15	20.39	15.05	17.46	21.44	25.10	30.74	35.34	18.17	20.30	14.86	22.18
2	2.14	3.15	1.81	1.67	.84	1.52	2.79	2.56	2.32	3.27	5.99	2.03	5.84	8.18	3.35	2.65	2.30
36	16.51	18.63	19.72	22.42	20.75	8.94	18.00	10.23	18.18	20.38	30.99	38.41	22.48	5.24	19.25	14.99	19.02
27	17.79	20.36	21.16	23.33	24.11	11.00	20.34	10.30	18.91	20.64	30.64	37.86	34.06	8.10	21.20	15.13	20.07
41	1.28	1.73	1.44	.91	3.36	2.06	2.34	.07	.73	.26	.35	.55	11.58	2.86	1.95	.14	1.05
12	1.08	1.35	.12	.69	2.50	2.69	.40	2.26	3.04	2.21	11.88	9.70	7.02	4.75	2.30	2.78	.66
19	.22	.07	.49	.07	.02	2.15	.05	4.75	1.45	.60	5.54	7.12	1.28	10.07	.90	.27	2.11
13	.86	1.42	.37	.76	2.52	.54	.45	2.49	1.59	3.01	6.34	2.58	5.74	5.32	1.40	2.51	1.23

[fol. 1518] Cross-examination:

In my cost study Exhibit 12 is set out in detail the evidence that I wish to give in support of the figures.

Whether the Secretary could make a just and reasonable rate for the commission men and the order buyers on the Chicago stockyards based on my cost study or whether there is something in addition to the cost study that would be required, I have not been able to determine from the orders so far issued by the Secretary what procedure he follows and therefore I am not in a position to answer the question. Whether I could would depend upon the basis employed in making the rate. I could make a just and reasonable rate from the cost studies. It has always been my position that cost was not the only element that should be considered in rate-making. You would not have to use judgment if the rate were going to be based entirely upon cost.

There are other methods for fixing a rate than taking the figures set up by an accountant. I have no doubt that there are different opinions as to how a rate should be made. The cost for handling a consignment of the various kinds of livestock will differ with the various firms. I don't believe that there are any two consignments alike. There are no two consignments that are exactly alike, and therefore there would be no exact comparison between the costs of any two firms. The salesmen for the various firms will get varying amounts of salary. There are salesmen in the yard who receive a salary that we may relatively call a high salary; other salesmen will receive a low salary. Upon the cost of salesmanship only, there would be different costs affecting the different firms. There would be dif-
[fol. 1519] ferent conditions. In other words, there undoubtedly are reasons why one salesman gets more or less than another. That is one thing that would influence the cost, and the difference in the character of business as between different firms is another reason. Now when you try to combine these two and ask me to explain why one is more or less than the other, it covers more ground than I can focus into an answer. From the cost study there is a difference in the actual unit cost of selling between two or more firms doing business at Chicago. Either per head or per car, there is a difference in the costs of yarding and

the office costs and all other items of cost for the various firms. Now, with those variances or differences I would reach the figure that I would call a reasonable figure either for any one of the items or for all of the items that make up a rate schedule, by arriving at the rated average cost for all of the firms combined. I have done that by a mathematical formula. The determination of costs does not permit of the use of judgment. They are all inclusive facts. The word "cost" in my testimony means actual out-of-pocket outlay of money. It also includes the accrual of certain expenses, such as insurance premium expense where insurance was not carried with an insurance company, and in this case the Government accountant made his accruals and I accepted them in my costs. I have also set up an appraisal of salaries as being a part of what I call cost.

I have considered them. That appraisal was based upon the judgment of certain members of the appraisal committee. I believe there would naturally be differences of opinion among different men as to what any individual might be worth. That would be determined by the judgment of that committee that has been appraising the salaries. [fol. 1520] When I made my remarks a minute ago about judgment I thought that you had in mind judgment after the cost was applied. That is what my answer referred to.

In a great deal of my accounting experience in connection with rate cases, I assisted in the preparation of the accounting data but did not testify. My experience has been over a number of years in connection with these rate cases, I haven't kept track of the number of cases. In the three livestock commission rate cases, St. Joe, St. Louis, Chicago, and in the case of the original Kansas City case I prepared the data but did not testify. I have testified actually in three livestock commission cases including the present one. In each of those three cases I prepared or was in charge of the preparation of the material assembled. I don't think there have been any rate cases apart from the livestock cases where I testified as an accountant. If in my direct testimony I have expressed the views that would come with much greater weight from an attorney or from an economist, I want it to be understood that they were my expressions as an accountant and not as an attorney or an economist. Throughout my cost study I have set up various tables, compilations of costs, etc. Primarily the methods employed were based on my experience as an account-

ant. I would say that most accounting practices have originated from experience and study. There is not any text book to my knowledge that sets out the accounting principles to be used in the handling of live stock commission rate cases. I do not know of any courts that passed upon the principle used by me in my present cost study. Text books deal with the principles that have been employed in this case, and I do not know of any method that has been used in this case that does not conform to the general subject in text books. I don't think I can name a text book because in my particular case my knowledge of ac- [fol. 1521] counting came from practical experience more than from text books.

On 37-G of my cost study, I have referred to differences between me and the Government of roughly $376,000, sheet 17. The amount of $376,263 represents the aggregate difference between the Government's cost and the Respondent's cost as shown on sheet 16 of my testimony in the column headed "Total, All Species" and opposite "Aggregate Cost of Service." On sheet 1 I show the same figures under paragraph 2 entitled "Reconciliation". It appears from that that out of that $376,000, $353,000 plus are made up of the appraisal of owner's salaries, which I should explain. There are two kinds of differences involved here, one is the differences of substance and the other a difference of distribution. The difference of substance is sho n on sheet 1 and the numerous difference- in distribution are shown throughout the first 16 pages of my testimony and summary on the 16th page. In addition to the $353,000 owners' salaries, I have two items of $11,000 each, "Expenses of Other Branches Not Charged to Chicago", and then "Interest on Capital Requirements". I show a difference of $2722. I have explained that in paragraph 5-A.

The explanation as to instructions given by me to the appraisal committee will be found in paragraph 3-D on sheet 1.

In that statement I said that I supplied the committee with necessary records which I mentioned. Then I say, in the second line: "Except that I instructed the committee not to give any weight whatever in its consideration to the owners' business getting ability".

[fol. 1522] "On the other hand, it was pointed out that the volume of business actually handled by the owner's

firm was an economic factor to be considered from the standpoint of operation and responsibility." There were no other instructions given by me to the committee or to any member thereof. As far as the appraisal of salaries is concerned, there is a very considerable and important difference between the two elements that I pointed out in paragraph 3-D. In other words, a man's business getting ability, or so-called "following", is quite a different thing in his relation to salary appraisal, than the volume of business that his firm handles. I accepted the salary appraisals as they were given to me. They were used by me exactly as the committee gave them. No instructions were given by me other than those set out in this cost study. I didn't inquire into just what the committee may have considered outside of the information I gave. I took the results of those considerations and used them in my cost study. If they took anything else into consideration I don't know. If they had taken other matters into consideration whether it would in my judgment have affected the value of the appraisal would depend on what it was that they took into consideration. These men are all, or most of them, personally acquainted with each of the owners under appraisement, and undoubtedly there were personal elements that they considered that couldn't possibly be set forth in the record of their different experiences in their business that I have set up on the appraisal records. I think it is highly important that the committee should have considered what they knew of these men. They were not supposed to inform me. The appraisal was handled absolutely independent of me except for the instructions that were given them by me.

[fol. 1523] "Q. Let me get at it this way, in your opinion, what matters could have been considered by the appraisal committee not set out on the sheets which were given to them and which would have been proper to consider?

A. I don't know that I am in a position, Mr. Miles, to relate all of the things, but one of the things that impressed me is that they had knowledge of each man's salesmanship ability."

That would be acquired by them through their personal contact with the man and through their contact with the business. Those are things which could not possibly be set

forth in the tabulation or on historical records such as I was able to give them, so I think unquestionably they did, and very rightly did take into consideration things which they had personal knowledge of, which undoubtedly improved the quality of their appraisal.

The mere fact that a man's business has fallen off would not necessarily mean that his appraisal should be correspondingly reduced and I should say that the same thing would apply to increase. It depends, as I said before, on the causes that brought about the increase or decrease in his business. There are and have been many decreases in the business that were certainly not a reflection on the owners of the firm. For instance, you can't attach the responsibility for direct buying which has reduced the organization volume so terrifically, on the owners of the firm. They have no control, and yet the people who do continue to send their hogs to the market to a certain commission man, they expect just as high a quality of service today as they did before direct buying entered the picture, and so the firm is called upon to maintain as high a quality of service today as they did before direct buying reduced its volume. I think that if the committee reduced what they would consider a man's normal and proper [fol. 1524] value because of a temporary decrease in volume it was a mistake. I used the term "economic factor" in paragraph D.

I meant that if a man like Mr. Fulkerson, for example, of the National Livestock Commission Company, by reason of his superior salesmanship ability, could handle such a large volume of business as his firm does, with subordinate salesmen, that the appraisal should recognize his ability, and in the long run, as indicated by these costs, these statistics, the cost would be no greater by reason of a high appraisal given him that it might be in the case of other firms where they did not have a single man of outstanding ability, but rather had a common level of salesmen throughout their organization. And I think it will be found throughout these appraisals that where they seem especially large it is because they are an outstanding figure and are able to economize in their salesmanship in other directions. If it were not for the presence of a man like Mr. Fulkerson in his firm, he would unquestionably have to pay considerably more salary to his individual salesmen, but

it is his presence and his superior ability that enables him to get along and render the service that his patrons expect of his firm without paying the maximum salary to salesmen. I have known Mr. Emmett Fulkerson for about two years. I have been in his office frequently, but my opinion as just expressed is based on my analysis of his accounts, and my familiarity with the appraisal, etc. that goes with it, rather than any personal contact or familiarity with his qualifications. I know this, that the opinion that I have expressed is unanimous among commission men in Chicago, and I think that I can repeat it safely since I don't believe they can all be wrong. One of the bases for my opinion is the appraisal of the salary committee. The [fol. 1525] members of the appraisal committee were very well acquainted with Mr. Fulkerson and his qualifications. In expressing the opinion I have, I have not seen Mr. Fulkerson selling cattle in the yards. I have not seen any actual management of his business. I have not see- how he handles the clients or customers who come in and talk with him. The basis of my opinion is on the favorable condition of his accounts and the expressed opinions of all the men I have come in contact with on the market, which are numerous and over a long enough period for me to consider that the opinion is sound and proper.

"Q. In your judgment is the manner of handling of business merely the basis for a man's value as shown by the appraisal?

A. I don't know just what you mean by the manner in which a man's——

Q. That is whether he is successful or whether it is a losing venture?

A. I don't think that has anything to do with the way a man manages his business. That is to say, the importance that I attach to a commission man's value is the way he serves his patrons. He may be losing in his business and be the best salesman on the market."

If you knew that one man received just half the business that another man received, its effect on my opinions as to the proper amount of salary would depend on how it happens that he is only receiving half as much business as the other fellow and how he is handling what he gets. Assuming that he is handling what he gets in a 100 per cent

manner, but over a period of a year he receives only half the volume of another firm, I have stated in paragraph 3-D on sheet No. 1, I believe that the volume of business actually handled should be considered. If I were a shipper [fol. 1526] I wouldn't be interested at all in the volume of business that a man handled. I would be interested in the volume of proceeds he shipped back to me.

I didn't know that the committee didn't give any consideration to the volume of business. That is something new to me. I gave them the volume and I think they considered it. The volume was on the sheet which they had in front of them, and in spite of the fact that Mr. Ryther does not refer to it in his testimony, does not mean that they did not consistently consider it. I think unquestionably they did consider it. If they didn't, I think they omitted one of the elements that they should have considered. I don't think it would entirely destroy the value of the appraisal, but I think it would influence it.

In the last line of paragraph B, sheet 1, I used the expression "These amounts to proper levels in the determination of cost." In our case the appraisal committee determined what levels were proper as the basis for that criticism. I say the Government has made no attempt to adjust these amounts to proper levels and by "proper levels" I had in mind the fact that no matter what level the Government may have worked to, they were inconsistent, for the simple reason that the tabulations which I have shown in paragraph 3-H on page 2 show that men of the same value, regardless of the level, were given widely different salaries by the Government. In the cases that I have enumerated in paragraph 3-H, the "Profit" was substituted by the Government for "Salaries".

[fol. 1527] Wherever there was a salary shown on the books, regardless of the inconsistency of that salary, the Government took it into their account as was shown by the books, and where a salary was not shown on the books they substituted the profit which was shown on the books. I used the word "substituted" because a profit is not a salary and when you use profit for a salary, you substitute the profit for a salary. I do not mean that the Government has substituted one figure for another figure. At the bottom of page 3(a) next to the last line I have used the expres-

sion, 'It was obvious that in order to arrive at complete and correct costs a reasonable allowance'' etc. Incorrectness of the cost would be very obviously indicated by the comparison which I have made in paragraph 3-A where I show that men of the same value were given widely different "profit salaries'' so-called by the Government. The different salaries in the case of men of the same value cannot all be correct, and wherever they are incorrect the costs are also incorrect, and it is unnecessary to determine that any specific cost is incorrect when you know that the elements are incorrect.

The appraisal committee's salaries taken represents the value to the shipper in our opinion. The appraisal committee determined the value of the services of this particular owner to the shipper. It was the appraisal committee's task to determine what their value was to the shipper.

''Q. Mr. Mudd, I will read to you from page 8266 of the transcript, being volume 42, the question propounded was this, to Mr. Ryther: 'Now in those cases did you take into consideration the value of the services rendered by that man to the shipper or only the value of the services to the market agency?' A. No, I took into consideration the value of a man to the firm he is with. Q. And only to the firm? A. Only to the firm.' Will you read it please to check me on my reading?

[fol. 1528] A. Well, you can change my testimony to read: 'Value to the firm' if you want to because I don't think there is any difference between value to the firm and value to the shipper. In explanation of that answer, the product of the commission rate only results in producing commission men's costs, and assuming of course that those costs are reasonable costs, whatever is fair to the commission man is fair to the shipper, because there is no profit there. Whatever is spent is spent for the shipper and the shipper alone.''

On sheet 2 under my first tabulation, the paragraph is H, beginning at the last of the third line, ''It is fair to assume that the several owners placed on the same level by that committee rendered services of somewhat equal value'', I think it goes considerably on beyond an assumption for the simple reason that there are a number of those illustrations in my testimony where the same situation exists. In other words, the appraisal committee have indicated that a cer-

tain group of men are of equal value and the proposed salaries which were substituted by the Government in lieu of salaries are widely different in the case of the men in those groups. There are a number of groups and I don't believe they are wrong in all of them. There might be a mistake here and there but it would not be in all of them.

"Q. You state that this is done, notwithstanding Mr. Ryther's statement that they are of value to the men they are with only and not to the shipper?

A. I can't see that that relates to this situation at all, because the comparison of the ratings given by the appraisal committee to certain groups of men with the amount taken in consideration by the Government has no connection so far as I can see to the question you now bring up."

Not knowing these men personally as the appraisal committee did, I am not able to say individually that their ap- [fol. 1529] praisals are correct or incorrect, but I am able to say that from an accounting standpoint, that is to say judging from the results of these appraisals when injected into the costs, that they are reasonable. My standard of determining whether a cost is or is not extremely high is by comparison with market average in the yards. My criterion for determining whether the costs after I use the appraisal salary are or are not out of line or unduly high is the effect of the appraisal upon the cost. The effect of the appraisal upon the cost is to either increase it or decrease it. Having reached that final sum, I compare that with the cost of other market agencies in paragraph 3-G for the purpose of showing that the high salaries do not necessarily mean high unit costs. I have listed here practically all of the firms, starting with the highest salaries at the top, and showing the salary, the volume, and unit costs, and this tabulation shows very clearly that high salaries do not necessarily mean high cost. I haven't determined whether the salary appraisal is too low, but I have made a tabulation here to show that the check of the appraisal in the case of high salaries did not result necessarily in high costs.

That is a firm with a salary of $27,500, the highest salary appraisal, with a cost per car of $20.67, cattle and calves, which is with few exceptions, one of the lowest costs of the whole group. There are a few firms having lower unit

costs than that firm which has the high salaries. The highest salary shown there is not the lowest unit cost nor the highest unit cost. There are several others lower and sev- [fol. 1530] eral others higher. In "sheep" the highest unit salary is the highest unit cost but if high salaries cause high costs, you would not find this variation that I have shown in this tabulation. It would and should then unfavorably produce high costs, but it does not. If high salaries meant low unit costs you would find that as an invariable rule set up in the table but it prevails in most of these cases but I don't think it is a rule. It does not prevail in sheep.

Sheet 3, paragraph 6, subdivision A. I point out the difference, some $11,000, and state in the third line this: "This is due primarily to the fact that the Government has arbitrarily placed the value of $750 on the Exchange membership." Our valu[illegible]f the Exchange membership is $1,006.43. That is [illegible]sed on a five year average of actual selling prices. During that five years there were not any sales made by the Exchange directly to members as far as I knew but if there were any, they were not included in my tabulations. I feel quite certain there were not. I think ten years could have been taken. I felt that five years was sufficient to be representative, and that five years would be somewhat more current. A part of that five-year period was what we called the era of high price, but judging from this tabulation it was not with respect to these memberships because the high period was very notic-able in 1928, and 1929 and 1930 were noticeably low. The highest figure used by me in obtaining the average was $1,850 in 1928. And the low figure was $650.

[fol. 1531] I said "The Government has arbitrarily placed a value of $750" because there was no reason for making the amount $750 any more than making it any other amount, whereas taking the average of actual selling prices, it was not arbitrarily in the sense, as I said before, mere guessing. The $750, however, could have been nothing else but a mere guess.

Mr. Bachmann's cost study was prepared in 1932 in which he used the $750. The average sales value of the Exchange membership during the year 1932 was $691.66. The transfer fee is $100 and that is paid by the transferee. The high figure for that year was $700, $650.00 was the

low. A statement of $650 means that if the transferee pays the fee, it is included in this $650.

I have considered the furniture and fixtures based on the valuation shown by the Government's inventory of furniture and fixtures and the amount for furniture and fixtures as well as for working capital and other assets agree with the accounts as taken into the cost accountancy by the Government accountant. There is a difference between us as to the amount of interest that should be allowed. I have used 8 per cent. I have no definite figure in mind as to what that extra one percentage would cover.

Sheet 3 of the cost study, paragraph 4, sub-paragraph B, beginning "In the case of John Clay & Company" refers on the third line to an "estimate". This estimate was made by the headquarters office of John Clay & Company. They gave me most details in support of the estimate. The [fol. 1532] same situation is true with reference to sub-paragraph C where I refer to Merrion and Wilkins. The same would also apply in the case of 5-A, William R. Smith & Son. On the same sheet in paragraph 7, the tabulation has an item "Expenses and Accruals $638,000". "Salaries" include all salary payments to owners and employees including the salary appraisal and adjustment. The expenses include all out-of-pocket expense as well as the insurance premium expense accruals that were added by the Government. The word "accrual" means the equivalent of insurance premiums where the insurance was not actually carried with an insurance company.

In previous cases that I have handled upon other markets I have made the accruals and added those amounts to the Government figures but in the Chicago case the Government made the accruals instead so that I didn't have to add them. Those accruals were arrived at by taking the insurance expense on the basis of 100 per cent coverage and deducting the amounts that the various firms had actually paid during the year in the form of insurance premiums, and which would have the effect of including in the cost 100 per cent insurance coverage. Now, continuing the same item, I have deducted $2,000, that is $2,276, opposite the item "Less—Country Selling and Buying Credit as per Schedule No. 7". There was some country selling and buying for which there must have been some expense. So I calculated the item of that expense on a

basis equivalent to the expense which would not have been incurred if the sales had been made in the yards. As I [fol. 1533] understand it, those sales are not made under the supervision of the Department, and the charges are not therefore under the Department supervision. It was, therefore, considered desirable to eliminate those transactions and the expense which attaches to them from the costs which were under consideration for rate making. The analysis of commissions made by the Government auditor segregated the country commissions, and I accepted that amount as representing the country commissions.

The basis is shown on my Schedule No. 7 in detail. On this schedule a list of the firms involved in country selling is shown together with the volume of such sales made by each firm, and as indicated in that schedule, the expense which attached to country selling was determined by taking a proportion of the total expense, since the expense which attached to country selling was included in the total. The only expense that was included was that which comes under the heading of selling. In other words, it does not include overhead. The overhead would probably have gone on just the same whether this incidental country selling had taken place or not.

There was a certain questionnaire as to the time spent by the various members of the firms' employees, etc. The term "Questionnaire" covers the form on which we set forth the distribution of the time of all of the owners and employees for each of the firms. But when it came to specific information as to how much time a man devoted to a particular line of duty the firm gave i tto me. [fol. 1534] It was handled in different ways, but I think as a general rule the office man consulted each owner and each employee and had them give him the information, and he probably himself entered in on the form, but the information came from the individual owners and employees.

We accepted the reports of these various people after having verified them backwards and forwards.

Referring to the records for the Stockmens Livestock Commission Company and the salary of Mr. Sam Kuit: 15 percent of his salary was distributed to selling cattle and calves, 21 per cent to selling hogs, 2 per cent to selling sheep, 1 per cent to preparing account sales, 2 per cent to bookkeeping and miscellaneous office work, 2 per cent to

business getting as applied to hogs, 1 per cent to business getting as applied to sheep and these three business gettings relate to country trips, 12 per cent to business getting, correspondence, circulars and so forth as applied to cattle and calves, 2 per cent to business getting, correspondence, circulars and so forth as applied to hogs, 1 percent to business getting, circulars, correspondence, and so forth as applied to sheep, 10 per cent to general supervision as applied to cattle and calves, 10 per cent to general supervision as applied to hogs and 2 per cent to business getting as applied to sheep. That accounts for 100 per cent of Mr. Kuit's time. The basis for distributing 15 per cent of [fol. 1535] his salary to that particular activity was his estimate of how he spent his time during the year. One per cent of his time, as estimated by Mr. Kuit was devoted to making out account sales. And for making out those account sales I have allowed 1 per cent as salary.

"Q. I see, but regardless of the reason why you took one per cent of his salary for one per cent of his time spent in what he called bookkeeper's duties, does that not result in rather an unbalanced set-up?

A. I don't consider it so. If the owner in many of these cases didn't assist in making out these account sales he might have to employ an extra clerk whose salary might amount to much more than the excess that you refer to.

Q. But you do recognize that his, let us call it "Salary," that his salary as one of the owners of the firm is more than the salary of a bookkeeper?

A. Why naturally, just the same as every executive in each organization, and in every kind of business, performs minor duties, and if he performs office boy duties he does not get an office boy's salary.

Q. And in your opinion that is correct accounting?

A. It is always correct accounting to set down the facts, and the amount of salary that Mr. Kuit received is a statement of fact.

Q. Now, a part of that, if I understand you correctly, is a fact as to actual salary, and a part is based upon the committee's appraisal?"

In the case of all owners where the amount they receive was a nominal amount, or otherwise did not agree with their value as determined by the appraisal committee, the

appraisal value of their services was used in my cost figures. The basis for reducing head to what I may call the carlot equivalent was furnished me by the Government accountant, and for an explanation of that I will refer you to paragraph 34 of my direct testimony. A carlot is a [fol. 1536] car, whether doubledeck or single-deck.

In St. Louis I treated a double-deck as one car. If you will refer to my exhibits in the St. Louis case you will find that I have not used the term "carlot" but instead I used the term "single-deck carlot," in some instances the single-deck feature is indicated by "SD" in parenthesis, but you will find that it is always there and a single-deck carlot is just what it says it is. But what I am talking about here now is cars, not single-deck cars, and a car is a car whether it is a single-deck or a double-deck. If it is a double-deck car, it is counted as two cars, but a car is a car whether it is single or double deck, and what we are talking about here is how did I arrive at the equivalent number of carlots in single-deck carlots.

In my paragraph 27 "Differences between the Government's and Respondents' distribution of office salaries—account sales," my statement there is in substance that the Government used "account sales, owners, and drafts" and that I used "drafts" only in distributing office salaries. This paragraph 27 on sheet 11 doesn't relate to office salaries as a whole, but simply those applying to account sales. "Office salaries, other" are explained under paragraph 28. In other words, the salary item was sub-divided as between those applying to account sales, account purchases, and other. There were three subdivisions of office salaries. Paragraph 27 relates only to those which applied to account sales.

[fol. 1537] Assuming that we have three drafts for one owner and then there are three drafts for three owners, I mean that the office salary so far as it applies to account sales would be distributed equally. The labor involved there would not be three times as much work to make out these three account sales for the three owners as the one account sale for the one owner because the bulk of the work involved in making out an account sale has to do with the scale tickets, and in the case of one owner having three account sales you would have three scale tickets and in the case of three owners having three account sales

you would still have three scale tickets, so that because the bulk of your work attaches to the scale tickets, the little additional work that may be involved because an additional account sale had to be written out is of no great consequence in the distribution of expenses.

No distributions used in cost accounting are perfect, but where sufficient volume is involved the law of averages operates whether the accountant does it deliberately or not. My purpose was to adopt the distributions which would be the most equitable, and imperfection is accounted for by the law of averages.

Q. May I ask if you have used the principle then of aggregates and averages throughout your entire cost study?

A. If I had done that I would have prepared individual cost statements for each firm; I would not have broken them up into individual accounts; I would not have broken them up into individual modes of arrival. But, in order to get at a proper aggregate, you must first assemble the details and aggregate them.

Q. And that is what you did?

A. And that is what I have done.

Q. Am I to understand from your answer then that you did not use aggregates and averages?

[fol. 1538] A. I think I made it clear that I did use aggregates and averages after the details had been worked out, and that the aggregates and averages resulted from the assembling of those ideas.

Q. That is all right. Now, Mr. Mudd, your theory is that the Government, by using account sales, owners, and drafts, that that method is inaccurate. You have stated that it is a mathematical fallacy, and that each of these factors carry different weights of influence. Would not the use of the three factors then tend to balance? You have pointed out that I have taken an isolated case and with a magnifying glass have pointed out some inequities. Now will not the use of the three methods used by the Government overcome those inequities and bring it to a better result?

Mr. Boyd: I object; he hasn't pointed out that he has used inequities.

Mr. Miles: Not the three factors used by him, used by the Government auditor.

(Continuing.) Mr. Mudd, regardless of the objection, regardless of the ungrammatical construction of the question, do you get what I am trying to drive at?

A. I do, and I might follow Mr. Boyd's remark by saying that I think that my explanation of the methods I employed fully explain that I did not admit that there were inconsistencies in these figures.

Q. Not in yours?

A. In my figures. Now, in connection with the triple basis used by the Government, that of account sales, owners, and drafts, I can only say that I do not believe that two or three wrongs make a right, even though they are added together.

Q. And will you tell me just where the wrongs are in that case?

A. Well, all three can't be right.

Q. Yes, sir.

A. And in my opinion drafts is right and therefore account sales and owners is wrong, and by adding the three together you certainly can't arrive at a right.

Q. But you do believe that one method alone might be nearer right, and if wrong there would be a much greater wrong, would it not?

[fol. 1539] A. No, I do not. I believe that the simple basis of the draft is as nearly correct as any basis that you can use, and when you influence that basis by injecting other elements into it it can't improve it.

Paragraph 28 refers to "salaries" followed with the word "Other". Salary means distribution of all expenses other than account sales and account purchases. All of these expenses are distributed on the basis of carlots. Suppose in a case where there is one owner for a carlot, and five owners per carlot. In such case, if those were the only shipments involved, the expense, other office salaries, would be equally divided. Inasmuch as there are only two cars, half of the expense would be charged against the one and half against the other. Such expenses include everything except the time devoted to the account sales and account purchases. As for enumerating all the little things that office people do, I don't know that I could do that completely. It would include bookkeeping and correspondence except the time of the salesman writing letters on

account sales or account purchases. There would not be three times as much work for the three owners as for the one owner, under those matters covered by paragraph 28. This because it is less work, it is not work of a character that occurs in connection with every owner, as for instance, the preparation of account sales or the writing of a letter on an account sale. A great number of owners might come and go without any correspondence whatsoever under this heading, and we might have a half dozen owners who might create account sales. On the other hand, this classification would include time devoted to writing letters, to ordering stationery and all sorts of letters. Office work, the [fol. 1540] great bulk of the office work which attaches to an owner is included under other headings.

In paragraph 29, I use the carlots there as against the Government's three-function proposition. The question of whether one basis is more accurate than another is not a mere question of opinion. The tabulations which I have given in paragraph 27, 28 and 29 indicate very clearly the fluctuating differences which result from the application of the Government's bases as between the various modes of arrival. These fluctuations are not at all competent; in fact they are extremely irregular.

Throughout my cost study, by way of testimony, I have criticized the Government's methods. If the Government were to adopt a head rate tariff that would not eliminate most of my criticism. Even if you attempted to build costs on a headage basis you would still find yourself in a position where you would have to distribute expenses, and if the methods employed were the same as have been employed in this present case, I don't see but what they would be just as objectionable.

In Government Exhibit 50, salary questionnaires, the only function shown for either Mr. C. R. Johnson or Mr. Elmer Johnson is cattle yardmen. On my Schedule No. 24-A, Elmer Johnson is shown as a salesman. The reason why Elmer Johnson is shown as a salesman on Schedule 24-A and mainly as a yardman on the salary questionnaire, is because in the development of Schedule 24-A, which was prepared sometime after the questionnaires, we felt that [fol. 1541] Elmer Johnson should have been classed as cattle salesman rather than as cattle yardman. Under our

classification we show Elmer Johnson as being 95 per cent cattle yardman.

On Schedule 24-A I have listed all of the salesmen as sales men and shown the number of months that they worked during the year 1932. Elmer Johnson was a salesman for John Clay & Company and worked for John Clay & Company 12 months during the year 1932 as shown by Schedule 24-A. And that work, under my showing in Schedule 24-A could have been in capacities that are usually performed by a salesman aside from the direct act of selling which is but one of the many functions of the salesmen. If Elmer Johnson had been a yardman as indicated by the questionnaire, then he would not have appeared on Schedule 24-A at all.

"Q. Now, if you were to treat Mr. Johnson as being a salesman 12 months out of the year that would reduce the volume handled on an average by the various salesmen, would it not?

A. No, Mr. Miles you are again confusing the cost study with Schedule No. 24-A. The cost study is a development of classified costs covering all of John Clay's employees without identifying the individuals embraced in that study, by name; whereas, Schedule No. 24-A is a statistical statement dealing with the salesmen individually and collectively for each firm and the volume of livestock handled by them as a whole."

Schedule No. 13 shows that John Clay sold 143,790 head of cattle and calves and bought 1,988 head of cattle and calves during 1932. The corresponding number of cars show that the sales were 5,697 cars, from Schedule 14. If you treat Mr. Johnson as a salesman, full-time, you would have an average performance of 1,139 cars as shown on [fol. 1542] Schedule No. 24-A. If you were to disregard Mr. Johnson as a salesman you would have an average performance of something over 1400 cars. Whether Mr. Johnson was included in the costs as a salesman or a yardman could not possibly affect the total unit cost in any way whatsoever, and it is also quite clear that statistics showing the capacity of salesman as indicated on Schedule 24 have to do with salesmen as individuals whereas the cost study is refined to the point of dealing with salesmanship

as one of the many functions of salesmen's duties. The questionnaires upon which the costs were based now show 95 per cent of his salary charged to yardage, whereas he was actually a salesman. Now, if he is a salesman his time, this 95 per cent of his time was devoted to selling instead of yarding, then the correction would have the effect of increasing the cost of selling as shown in my cost study and decreasing the cost of yarding.

As a salesman the classification of his salary in the costs would be changed from yarding to selling, thereby increasing the cost of selling. As a yardman no change in the cost would be necessary, but a change in Schedule No. 24-A would be necessary. If Elmer Johnson was not a salesman he would be eliminated from Schedule 24-A entirely.

In the case of Mr. Rinderle he does nothing but supervise. In the cost it is therefore proper to include whatever part of his time was devoted to the supervision of selling in the selling cost, but in the statistics as shown on Schedule 24 we did not feel that it would be proper to include it because he was not directly concerned with the selling. It was entirely supervision. We have not included Mr. Rin- [fol. 1543] derle himself on Schedule 24. The result of that is that we have not reduced the average number of cars per salesman as would have been done if we had included Mr. Rinderle in this list of salesmen. Assuming that Mr. Rinderle did nothing in the way of selling, that is either directly or indirectly, that fact would necessitate a change in my cost study. He spent nearly 41 per cent of his time in supervising the selling, as in the case of all other owners and employees who did not perform the duties which are shown on that questionnaire, changes would be necessary in the cost study. Assuming that he did nothing about selling, then we would have to transfer that part of his time to the function that he actually did perform, but that, as stated in the case of John Clay, would in no way affect the total cost. It would simply transfer that part of his salary to another classification. If Mr. Rinderle had not supervised the selling, the result would be to reduce the selling cost, just as in the case of Clay the result would be to increase the selling cost.

If Mr. Young had been in the service of Stafford Brothers and his services were such as would make it proper for

them to continue paying him during his absence on account of illness, or for other good reason, the salary so paid would be properly included in the cost just the same as salaries of employees on vacation is a proper element of [fol. 1544] cost. The period of time might enlarge the question but I do not believe it affects the correctness of the account keeping. If we had included Mr. Young, however, which we did not do, in the statistics shown on Schedule 24-A, it would have had the result of reducing the average number of cars per salesman.

Mr. Hager of Merrion & Wilkins Co. is shown on the questionnaire as having devoted over 37 per cent of his time to sheep selling, 11 per cent to sheep buying and 31 per cent to sheep yarding, and he is included as a salesman on Schedule 24-C. Assuming that he does no selling, it would require a transfer of that part of his salary from the classification selling to the classification for whatever function he performs instead. On Schedule 24-C it would require his elimination entirely. It would not affect the total unit cost at all. It would affect the selling cost in one direction and some other function in the other direction to the same extent. It would reduce the selling cost and add, to the yardage cost if he performed yarding. With reference to Rence Green of Rice Brothers, 83 per cent of his time is shown against selling cattle. Three per cent is charged against selling service for another firm by the name of A. Burnett, 11 per cent against business-getting country trips, and 3 per cent against business-getting correspondence, circulars, et cetera.

"Q. Mr. Mudd, in the Government set-up in other cases we have set up as a separate item the word "Profit". If the Government were to allow the appraised salaries which you have taken in the study, should there still be profit allowed as a separate item?

[fol. 1545] A. Yes, by all means, because salary, whether appraised salary or otherwise, represents the man's compensation for the service he renders and does not include a profit which he also hopes to make out of his business.

Q. The salary appraisal was intended to allow a man all he was worth, was it not?

A. Not in the sense of including profit, but in the sense of compensating him for the services that he rendered."

I would figure profits this way: First let us take two sides and compare them—one a firm that consists purely of a manager and the cost therefore does not include any owner compensation element. They do have employees to operate the business and their compensation is included in the cost. Then take another firm, that is, an owner, but the owner does not receive any compensation in the form of salary and it therefore becomes necessary, in order to make the two firms comparable, to establish the worth of the owner's services in the case of the second firm. The appraisal was resorted to as a means of establishing the worth of the owner's services so that the cost would not omit any essential elements, but in the appraisal nothing other than costs were included, in other words, the appraisal did not include a profit, and therefore a profit, or whatever profit is to be allowed, must be considered in addition to the cost. Now, answering your question more directly in the light of this explanation, I might say that I am not prepared to suggest what allowance should be made for profit in addition to the cost as shown by my cost statement.

[fol. 1546] The time cards on which time distributions were made were carried by the individual whose time was recorded on the card and he made his own recording. They went through a checking on the part of the office men of the particular firms employing these individuals, and a secondary check on the part of my own force. Mr. Johnson made a report which is the basis for this time study. There were 19 firms involved in the time study, one of which was Clay Company, and Mr. Johnson was one of Clay Company's men covered by the time study. He made his own report. The time study shows any time that he devoted to any and all functions, including selling. It does not show volume on the sheets we have just been talking about. Volume is summarized for the firm as a whole on another sheet. It would be utterly impossible and impracticable to keep a record of the volume by individual salesmen because in perhaps most of the cases the selling is not performed by one man but only he is assisted, directly or indirectly, by others in these sales; so that the volume was assembled by firms and so summarized. If Mr. McAdams of Clay was engaged in selling on a particular date, this record would show he was engaged in selling.

In the tabulated list, under the caption "Sheep", I have set up various amounts, "Government Cost Per Car," and

then the "Respondent Cost Per Car." Opposite the word "Seconds" I show a Government cost of $71.16.

[fol. 1547] I took the Government cost statement shown on pages 287 to 550 of Government Exhibit No. 49 and summarized them exactly as they were, and then I added the costs for those firms which had been omitted by the Government because the volume was considered too small for consideration. It was necessary to make these additions in order that the total costs would be correctly stated, and it was on the basis of the totals resulting from the summarizing of Government costs that the aggregate cost for selling sheep seconds, amounting to $15,727, as shown on sheet 16 of my testimony, was determined. The number of cars of sheep seconds handled, which was 221, was then divided into this aggregate Government cost and the result is $71.16 per car. The inclusion under the heading of sheep seconds of splits, and the country sales, if any, undoubtedly had a very considerable influence on this unit cost. There was however a third influence, and this arose out of the method the Government accountant used in arriving at the equivalent number of carlots which served as a basis for the distribution of expenses and accordingly affected the cost of sheep seconds.

In connection with the Government cost per car for sheep seconds, as shown on sheet 16 of my testimony, as $71.17, the following explanation is made: In the first place, Government Exhibit No. 49, pages 226, 7 and 8, show that after omitting the two co-operative firms, there were handled during the year 1932 44,052 head of sheep seconds, 80,949 head of sheep splits, and 21,627 head of sheep country sales. The Government in calculating its costs for the [fol. 1548] respective firms included the splits and the country volume with the volume for seconds for all of its distribution of expenses to seconds on the basis of the aggregate volume which had the effect of increasing the cost of handling seconds very noticeably. In summarizing the Government costs for purposes of comparison, as shown on sheet 16 of my testimony, I used the exact costs as distributed by the Government, which aggregated $15,727 for sheep seconds for all firms, excluding the two cooperatives. Then in calculating the unit cost per car I used the correct number of cars of seconds which did not include the cars of splits and country sales, with the result that the cost per

car is shown to be $71.16. There is no relationship between seconds, splits, and country. I presume that the Government accountant included or merged them because all of them were somewhat supplementary transactions to the great bulk of business handled on the market. I have in mind the figure below which a firm would be classed as "low volume" and it is gained from the testimony and conversations on that subject. It has led me to believe that when the Government spoke of low-volume firms it had in mind firms handling less than 50 cars of cattle, 100 cars of hogs, and 100 cars of sheep, and those are the firms which I have in mind and used in connection with my remarks under paragraph 39 on sheet 18.

I recall the testimony adduced in this case from some of the commission men to the effect that they could have sold [fol. 1549] more if they had cattle or other livestock to sell. They left their answer just where you have left it. They said they could have handled more, but they omitted to add that they would have to increase their expenses in order to do it. I have no doubt but what some of them could handle a certain amount of additional volume without additional salesmen. In fact during the year 1932 I have no doubt that a number of them could have, because the livestock commission men, like the managers of any other kind of business, find it utterly impossible to reduce their expenses parallel to volume reduction. Therefore, if there is a slight reaction in volume during such a period it can be handled without additional expense. It is simply taking up the slack that necessarily occurs under declining volume. I don't object to the assumption that a greater volume could have been handled by the larger firms without additional expense but I do object to the extent to which the Government carried the assumption, and as just indicated in my remarks, I believe that some of the firms could handle a slight increase in volume, but by no means the amount of volume which would be involved if what is here classified as the low-volume firms were eliminated.

On sheet 19, at the top of the page, I have testified that any downward adjustments made in commission rates would lower the standard required. The exhibit that I have referred to, the cost study, showed that based on my figures the commission men are doing business at a loss.

The commission men who are operating at a loss could no [fol. 1550] doubt avoid that loss if they would reduce the quality of the service they now render to the shipper.

When a man says he does not always get the highest price for his livestock, it does not mean he does not get what the stock is worth. Someone else might have a better grade and get a higher price. Markets make a point of giving publicity to the highest prices obtained. It does not mean that everyone else who accepts lower price was inefficient. It simply means that they have varying quality to sell.

I would consider the number of head and the size of the drafts in which they were handled. I would also consider the weight of the animals. I think that in some of my previous testimony I have indicated that I do not consider that rates should be based entirely on costs, but that the shipper's point of view should also be considered and by that latter remark I mean the proceeds and the weight element would seem to amply recognize the proceed factor.

"Q. Mr. Mudd, without taking the specific number of dollars, but generally speaking, what would be the effect upon your cost study if instead of taking the appraised salaries you were to take only the withdrawals, whether you call it profit to the owner or salary or withdrawal, generally speaking?

A. You mean in other words if I had used the same salary figures as the Government?

Q. Yes, sir.

A. In making this statement I want to repeat and emphasize the position I have taken with respect to these appraisals, and that is that they are essentially a part of the expense that should be considered. However, in direct answer to your question, if the amount of appraisal adjustments were eliminated it would reduce the expense slightly more than 11 per cent."

[fol. 1551] The basic explanation of stand by time is given, quite completely and clearly, in Section 10-H of my testimony and that explanation would permit me to answer your question or any other question pertaining to stand by time accurately. In other words, you can't answer that question at all until you first determine whether there were any reasons why, specific reasons why, that man

should remain in the yards after the duties you refer to were completed. He may have had a telegram which informed him that another shipment was coming in that day, and that shipment had been delayed or for reasons had not arrived, and he would necessarily have to wait for it. If, as this explanation states, he were waiting for a specific kind of shipment, he would not charge his time to stand by time, but to that particular trend of the shipment. In other words, stand by time would only be that class of time where he was waiting without any specific knowledge of what he was waiting for. If the man went home, when the day is half over, you would charge that to stand by time.

I spoke of errors in connection with Mr. Bachmann's distribution. With respect to the calculation of the equivalent number of carlots as applied to truck-ins and seconds, I am inclined to think the explanation indicated that is was a slip-up on the part of a subordinate not dictated by the accountant in charge. In the course of running off some of Mr. Bachmann's figures for my use I ran across a few minor mathematical errors, but they were of no real [fol. 1552] consequence. At one time I said that "the spread would be out" because Mr. Bachmann used decklots as to truck-ins and to seconds. I mean that if he had a certain amount of expense to distribute over all of the modes of arrival, that if by reason of using decklots as a basis for the determination of equivalent carlots in truck-ins and seconds he overcharged truck-ins and seconds he necessarily undercharged the other classes of service.

For firm 18 there were 336 equivalent carlots of drive-in cattle and calves, 555 equivalent carlots of cattle and calves seconds, 153 equivalent carlots of drive-in hogs, 27 carlots, equivalent carlots of hog seconds, 54 equivalent carlots of drive-in sheep and 11 equivalent carlots of sheep seconds.

Assume that you would use Mr. Bachmann's basis, and then my own basis to show the difference there would be in unit cost for firm 18 only. In the case of cattle seconds, there were apparently no double decks and therefore there would be no difference. In the case of hogs there were shown on my statement 27 carlots and 41 decklots of seconds shown on Mr. Bachmann's statement. By using 27 carlots as a basis for calculating the unit cost of hog seconds, I would get a unit cost of $8.49 instead, a difference of about $4.40.

[fol. 1553] Redirect examination of Mr. Mudd.

By Mr. Boyd:

There is a reason for reducing seconds to carlots even though the per-head rate applies to seconds. The justification for reducing either truck-ins or seconds to carlot equivalents is to put those two classes of business on the same basis as other classes of business for purposes of distribution. As a measure of the contents, or as a measure of volume, I should say, the carlot has no practical meaning. It is only for the purpose of making comparison of costs. That stand by time in the livestock business is in no way comparable with idle time as you might find it in other industries. The term "stand by time" is a technical accounting time designed for the purpose of segregating a certain part of the time devoted by livestock men to their business, so that that particular class of time could be more correctly distributed to, or allocated to the various classes of service they render. An illustration: a man has livestock for sale on Monday. On Tuesday, an active market day, for one reason or another, he had no livestock to sell, but stayed at the yards to keep himself thoroughly posted. That would come under the accounting classification of stand by time. One of the appraisers was actually the employer of Emmett Fulkerson for a large number of years. He would therefore be thoroughly and intimately acquainted with his value to the industry.

[fol. 1554] Dr. Harry H. O'Neill, a witness for the Respondents, having been sworn, testified as follows:

Direct examination.

By Mr. Boyd:

My name is Harry H. O'Neill. I work in St. Louis and reside in Webster Cross. I am professor of economics head of the department at St. Louis University at St. Louis, Missouri. I have held that chair two years.

I did my undergraduate work at the University of Nebraska. I took my master's degree at Columbia University and did my Ph. D. work at the University of California,

Berkeley. In all three institutions I majored in economics and allied fields. I have had some experience in the marketing of livestock. We always intend to sell through local shippers, usually, but made those consignments to the regular commission merchant. In some cases where we thought we could do better, we made our own consignments.

I refer to Exhibit 22. It is a correlation study, the purpose of which was to determine or find out what degree of association existed between volume of business and costs of doing business. I supervised its preparation. The information was supplied by Mr. Mudd. Correlation is a process or method by which we find the degree of relationship or association between two or more variables. The range of correlation runs from minus one through zero to plus one. If you have a correlation that is a positive, it shows a direct [fol. 1555] relationship, and if the correlation happens to be a minus, it shows an inverse relationship. By direct relationship in this particular case, if you have a large volume, as associated with high cost you would have a direct relationship or positive correlation. If as volume increases, costs decline, you have an inverse relationship.

The experts state that if a coefficient, a correlation, is greater than .95 there is a high degree of correlation between the variables, and one of them may be quite accurately estimated from the known value of the other. If the coefficient is greater than .75 but less than .85, there is a decided amount of association between the two series. If the coefficient is greater than .40 but less than .60, there may be a fair degree of association between the two series, but any estimate of one variable from a known value of the other would ordinarily be of but little practical value. If the coefficient is less than .35, it is not likely that any significant association is present between the two series, and one of the series can not be used as the basis for estimating the value of the other. These are in general accepted by most men in the field. The first column on Exhibit 22 is headed "Firm Number". That is the number assigned by the Government to the firm under investigation. The second column is the number of carlots which have been handled by each of the firms listed, by number, under column 1. The third column is unit cost per car determined by Mr. Mudd. This cost per car is indicated for each of the firms.

[fol. 1556] The column headed "Deviation of X from Mean of X" is determined by finding the mean of the number of carlots, and when that arithmetical mean is determined, we find out how far each of the items in the carlot exceeds or is less than the mean so calculated. The same process is done to determine the deviation of Y which means unit cost per car for each item, from the mean of the column headed Unit Cost Per Car. Now, wherever the item for cost per carlot exceeds the mean—is greater than the mean—the sign of the deviation is plus. The pluses are not indicated. Wherever the item considered is less than the mean, the deviation is indicated by a minus.

In the column headed "Deviation of X Squared," we merely take the deviation of X's and square them. The deviation of Y squared is done in the same way. In the column headed "Product of X and Y," we merely multiply the deviation of X from the mean of X times the deviation of Y from the mean of Y. This is done algebraically.

When this part of the work is completed, we find a standard deviation of X squared, the sum of X squared and the sum of Y squared. The sum of the standard deviation of the sum of X squared is found by dividing the sum, for example, of X squared by the number of items. On sheet 1 of Exhibit 22 there are 95 items, I believe, so that we divide 58,587,069.30 by 95 and extract the square root. That gives you sign X. Then we determine the standard deviation of the sum of Y squared in the same manner that the [fol. 1557] standard deviation of the sum of X squared was determined. That is shown on the back of the sheet. The next step is to add algebraically the items in the column headed "Product of X and Y," being very careful to determine the sign of the signs X, because if that sum is plus, then the correlation will have a plus sign. If the sum is minus, then the correlation will be a minus or negative correlation—inverse correlation, I should say.

The method used here of determining this correlation is that used by Pearson, also known as the Pearsonian formula. This is indicated on the back of sheet 1 of Exhibit 22.

For cattle and calves in straight cars, single ownership, for the year 1932, the answer is minus 0.066. That indicates, since the correlation is apparently considerably less than any significant number, that there is little or a very small degree of relation, if any, between the volume and

costs in the case of cattle and calves based upon those figures.

Sheet No. 2 of Exhibit 22 deals with cattle and calves, straight cars, plural ownership, 1932. We find here a correlation of minus .216, which again is less than any significant relationship. It shows a very small, if any, degree of relationship.

[fol. 1558] The third sheet deals with cattle and calves, mixed cars, single ownership, 1932, and was produced in the same fashion. The result is a figure of minus .005, which indicates almost a perfect lack of relationship.

Sheet 4 deals with cattle and calves, mixed cars, plural ownership, 1932, prepared in the same way. The result is a correlation of minus .101, which indicates little or no relationship.

Sheet 5 deals with cattle and calves, drive-ins, for 1932. The result *is* a correlation was found to be a minus .219, which amount indicates little if any degree of association.

Sheet 6 covers cattle and calves, seconds 1932. This was prepared in the same way as the preceding analysis and we find a correlation of minus .26, which again indicates little or no degree of association.

Sheet 7 deals with cattle and calves, buying, all classes, 1932. The degree of correlation was found to be minus .167, which indicates very little if any degree of association.

For hogs for 1932, the results are:

Straight cars, single ownership	minus .177
Straight cars, plural ownership	minus .159
Mixed cars, single ownership	minus .008
Mixed cars, plural ownership	minus .242
Drive-ins	minus .24
[fol. 1559] Seconds	minus .003
Hogs, buying, all classes	minus .234

For sheep for 1932, the results are:

Straight cars, single ownership	minus .022
Straight cars, plural ownership	plus .002
Mixed cars, single ownership	plus .002
Mixed cars, plural ownership	plus .044
Drive-ins	minus .033
Sheep, seconds	minus .182
Buying, all classes	minus .062

The study indicates little or no degree of association between the figures for volume and costs as supplied to me. It is the method that is most generally used. In fact, it is in very general use. Where I have referred to costs, I have reference to unit costs. We have included all firms on the market and the number of items are sufficiently numerous to give quite accurate results. This case is not a question of sampling at all. We have used all the firms on the market.

Exhibit 23 was prepared under my direction and supervision. The basic figures were supplied to me by Mr. Mudd.

Exhibit 23 is a bulk line analysis of the cost of selling. [fol. 1560] This exhibit indicates the bulk line estimate, median cost, and also has indicated upon it the weighted average costs. The first sheet deals with cattle and calves, straight cars, single ownership. The first thing which was done was to rank the costs, beginning with the lowest unit cost at the top and proceeding down until the costs of all firms were indicated, the highest unit cost being at the bottom of the column. Now, this ranking of costs is indicated in column 3 under the cost per car. In the column headed Number of Carlots, we have indicated there the number of carlots that were handled at each of the unit costs as indicated in column 3 and shown in dollars and cents. I was interested in finding out what it cost to handle the cheapest ten per cent of the volume of business. I found out that the cheapest ten per cent of the cattle and calves, straight cars, single ownership, were handled at a unit cost of $16.92; that is to say, the most expensive portion of this ten per cent, the first ten per cent which were handled at the low cost, cost $16.92 per car. The bulk line for the 20 per cent, the cheapest cost for the 20 per cent, indicates a cost of $17.08. The 30 per cent bulk line indicates a cost of $18.06. When I say 30 per cent bulk line, I mean 30 per cent of the volume which was handled as the lowest unit [fol. 1561] cost indicates. That means, of course, within that 30 per cent that some of the stuff was handled at a lower cost, but the $18.06 is the unit cost of the most expensive portion of the lowest 30 per cent of the volume which was handled. The bulk line for 40 per cent of the total volume handled was $19.02. The $18.06 does not represent the average cost of the 30 per cent. It merely indicates that the most expensive portion of this lowest cost volume was $18.06. The same thing was true for the 40

per cent bulk line which was found to be $19.02. Fifty per cent of the volume of the lowest cost volume indicates a bulk line of $19.92—a bulk line cost of $19.92. The 60 per cent of the volume indicates a bulk line cost of $20.68. The 66⅔% bulk line indicates a bulk line cost of $22.24. Seventy-one and two-thirds per cent bulk line indicates a cost of $22.78. The 70% of the volume handled indicates a bulk line cost of $22.78; and the 80 per cent of the volume handled indicates a bulk line cost of $24.08. The 90 per cent of the volume handled most cheaply indicates a bulk line cost of $26.45.

The median cost is the cost to that firm which is exactly midway between the lowest unit cost and the highest unit cost; in other words, when you find the median, there are just as many cases above it as there are below it. The weighted average cost was determined by Mr. Mudd as $20.76 for cattle and calves, straight cars, single ownership. It most nearly corresponds with the 60 per cent bulk line in this particular case.

[fol. 1562] The bulk line cost analysis serves, it seems to me, two purposes. In the first place, it furnishes a basis for the use of reason in determining a fair rate. In the second place it serves as a basis for reasonableness of any rate based upon market averages. In the consideration of its first use, that is its use to furnish a basis for judgment or reason in determining rates, it is my conviction that if the problem were placed before a reasonably intelligent body of men, who were acquainted with the business in question, they would not select a bulk line less than 66-2/3 per cent. Here I am convinced that a higher bulk line would be selected. It would seem unreasonable to conclude that as much as one-third of the total volume of business, under the competitive conditions prevailing in the Chicago market, should be attained at costs that are too high. In the second case, it used as a check or a test of the market average. If the market average were so high as to include an excessive portion of the volume of business done, especially when the range of costs are wide, the bulk line analysis would indicate that the market average was too high. On the other hand, if the range of costs were narrow, and the market average did not include a large percentage of the volume of business done, it would indicate a market average that was probably too low.

[fol. 1563] Now, in the case of sheet 1 of 23, if we were to use, for example, a 50 per cent bulk line as a basis for our starting point for determining what might be considered a fair rate, the cost of the lowest 50 per cent of the volume of goods, calves and cattle, handled, straight car single ownership, would indicate that 66 firms out of the 95 per cent, roughly 67 per cent of the firms would be doing business at a cost in excess of the 50 per cent bulk line. In other words, only one third of the firms could do business within the 50 per cent bulk line, and some of them make a profit. If the 60 per cent bulk line costs were taken as a basis it would indicate that 57 out of 95 firms, or about 58 per cent of the firms would be doing business at a cost in excess of this. If the 66-2/3 per cent bulk line cost in case of cattle and calves, straight car single ownership were used there would be 51 firms out of the 95 whose costs would exceed this bulk line cost. If the 70 per cent bulk line cost were used there would be 47 firms out of 95 whose costs are in excess of the 70 per cent bulk line cost.

It seemed to me that if this problem were put up to a group of reasonably intelligent men who were acquainted with the competitive conditions which do exist in this market, that it would be very unlikely that any group would select a bulk line cost lower than the 66-2/3 per cent, and I [fol. 1564] feel that they would select a higher bulk line cost. Most people, it seems to me, would select a bulk line cost which might exceed 66-2/3 per cent by as high as 70, possibly 75 per cent. The weighted average cost is above, just slightly above the 60 per cent bulk line or just about at it. The median cost and the 70 per cent bulk line are identical in this particular case, that is, cattle and calves, straight cars, single ownership, or $22.78.

Sheet 2 of Exhibit 23 shows for the year, 1932, straight cars, plural ownership of cattle and calves, the following costs:

10%	bulk	line	$20.39
20%	"	"	22.03
30%	"	"	23.43
40%	"	"	24.04
50%	"	"	26.64
66–2/3%	"	"	29.40
70%	"	"	30.20
71–2/3%	"	"	28.15

Median $28.15; weighted average $26.65.

In the case of cattle and calves, mixed cars, single ownership, 1932, sheet 3 of 23, the 10 per cent bulk line cost was $23.17; 20 per cent was found to be $24.76; 30 per cent was [fol. 1565] found to be $27.00; 40 per cent, $28.81; 50 per cent bulk line was found to be $31.74; the 60 per cent line was found to be $33.00; 66–2/3 per cent bulk line was found to be $34.02; the 70 per cent bulk line was found to be $34.02; 80 per cent was $36.40; and 90 per cent $41.11. The weighted average cost was $30.98 nearly approximating the 50% bulk line. The median cost was $30.17.

Sheet 4 which deals with cattle and calves, mixed cars, plural ownership, 1932. The 10 per cent bulk line is found to be $28.57; 20 per cent, $31.95; the 30 per cent, $33.81; 40 per cent, $34.72; 50 per cent, $36.91; the 60 per cent, $38.81; 66–2/3 per cent, $39.65; 70 per cent, $40.58; 80 per cent is $44.15; the 90 per cent bulk line is found to be $46.33. The weighted average was $37.88 which exceeds the 50 per cent bulk line, approximately half way between 50 and 60 per cent bulk line, and the median cost is $37.89, which checks very closely with the weighted average cost.

On sheet 5 of Exhibit 23 in the case of cattle and calves, drive-ins, 1932, the 10 per cent bulk line cost was found to be $24.62; the 20 per cent bulk line cost was found to be $26.33 per car; the 30 per cent bulk line cost was found to be $29.61; the 40 per cent bulk line cost was found to be $31.50; the 50 per cent bulk line cost was found to be $33.62; 60 per cent was found to be $34.18; 66–2/3 per cent bulk line, [fol. 1566] $35.47; 70 per cent was found to be $35.78; the 80 per cent, $37.34; the 90 per cent, $40.73. The median cost was found to be $34.14 which corresponds very closely with the 60 per cent bulk line cost which is $34.18, 4 cents above. The weighted average cost was found to be $32.97 which falls somewhat less, very close to the 50 per cent bulk line cost.

Sheet 6 which deals with cattle and calves, seconds, 1932. The 10 per cent bulk line was $11.83; the 20 per cent bulk line cost was $12.62; 30 per cent bulk line cost $12.99; 40 per cent bulk line cost, $14.24; 50 per cent bulk line cost, $14.95; 60 per cent bulk line cost, $17.06; 66–2/3 per cent bulk line cost, $17.40; the 70 per cent, $17.50; 80 per cent, $18.99; 90 per cent, $20.72. Now the median cost, $17.37, corresponds very closely with the 66–2/3 per cent bulk line which

was $17.40, and the weighted average, $15.93, exceeds the 50 per cent bulk line.

On sheet 7, cattle and calves, buying, 1932, the 40 per cent bulk line cost was $14.24; the 50 per cent bulk line $15.40; the 60 per cent bulk line cost, $15.70; the 66–2/3 per cent, $16.12; the 70 per cent, $16.15. The median cost, $15.67 corresponds very closely with the 60 per cent bulk line cost. The weighted average is $15.96 which corresponds [fol. 1567] fairly closely with the 66–2/3 per cent bulk line. In connection with buying, the information which I have used does not include the costs of order buyers on the market, but as indicated, "Chicago Live Stock Exchange Firms" only.

Sheet 8 refers to hogs, straight cars, single ownership, 1932. The 40 per cent bulk line indicates the cost of $16.68; the 50 per cent bulk line indicates cost of $17.49; the 60 per cent, $17.96; the 66–2/3 bulk line, $18.91; and the 70 per cent, $19.37. Now the median cost is found to be $17.64 which corresponds very closely with the weighted average cost, the $17.57, both of them lie somewhere between the 50 and 60 per cent bulk line, nearer the 50 per cent.

Sheet 9 deals with hogs, straight cars, plural ownership. The 40 per cent bulk line cost was $19.02; the 50 per cent, $20.18; the 60 per cent, $21.00; the 66–2/3 per cent, $21.73; the 70 per cent, $21.88. The median cost was found to be $20.86; this corresponds very closely with the 60 per cent bulk line cost and exceeds the weighted average cost. The weighted average cost was $20.45. That falls between the 50 per cent and 60 per cent bulk lines.

[fol. 1568] Sheet 10 has to do with hogs, mixed cars, single ownership. In the case of hogs, mixed cars, single ownership, the 40 per cent bulk line was $18.90; the 50 per cent, $21.40; the 60 per cent, $23.32; the 66–2/3 per cent, $23.60; the 70 per cent, $24.32. The median cost was found to be $20.41 which corresponds very closely with the 50 per cent bulk line cost and also very closely with the weighted average cost of $21.65.

Sheet 11 deals with hogs, mixed cars, plural ownership. The 40 per cent bulk line cost was found to be $21.57; the 50 per cent, $22.47; the 60 per cent, $23.86; and the 66-2/3 per cent, $24.46; the 70 per cent, $25.52. The median cost, $23.86, is identical with the 60 per cent bulk line cost and

exceeds by a small amount the weighted average cost of $23.40.

Sheet 12 covers hogs, drive-ins of hogs. The 40 per cent bulk line cost was $21.90; the 50 per cent, $23.90; the 60 per cent, $24.89; the 66–2/3 per cent, $25.66; the 70 per cent, $26.01. The median cost, $25.05, falls about midway between the 60 and 61–2/3 per cent bulk line cost and exceeds the weighted average cost of $24.09. The weighted average falls between the 50 and 60 per cent bulk line.

[fol. 1569] Sheet 13 has to do with hogs, seconds. The 40 per cent bulk line cost in the case of hogs, seconds, was found to be $11.92; the 50 per cent $12.25; the 60 per cent $12.74; the 66⅔ per cent $14.04; the 70 per cent, $14.87. The median cost in this case of $12.31 is slightly greater than the 50 per cent bulk line cost. The weighted average cost of $13.15 is slightly greater than the 61⅔ per cent bulk line cost.

Sheet 14 has to do with hogs, buying, all classes. 40 per cent bulk line cost is $11.97; 50 per cent, $11.97; 60 per cent, $11.97; 66⅔ per cent is $13.25; 70 per cent is $13.67; 71⅔ per cent $15.05. The median cost for hogs, buying, all classes, $13.83, exceeds slightly the 70 per cent bulk line and is somewhat less than the weighted average cost of $15.05.

Sheet 15 covers sheep, straight cars, single ownership. The 40 per cent bulk line cost for sheep, straight cars, single ownership, was found to be $14.21; 50 per cent $14.21; 60 per cent, $16.03; 66⅔ per cent, $17.58; 70 per cent, $17.58. The median was $15.42 which falls between the 50 and 60 per cent bulk line cost, and the weighted average cost of $17.46 falls very close to the 66⅔ per cent bulk line.

[fol. 1570] Sheet 16 covers sheep, straight cars, plural ownership. In the case of sheep, straight cars, plural ownership, the 40 per cent bulk line is $17.86; the 50 per cent bulk line is $19.28; 60 per cent bulk line is $21.23; 66⅔ per cent bulk line is $21.99; 70 per cent bulk line is $21.99. The median cost of $19.67 falls somewhere between the 50 and 60 per cent bulk line, somewhat nearer the 50 per cent. The weighted average cost, $21.44, corresponds fairly closely with the 61⅔ per cent bulk line.

Sheet 17 covers sheep, mixed cars, single ownership. The 40 per cent bulk line is $21.29; the 50 per cent bulk line is

$21.89; 60 per cent, $23.33; 66⅔ per cent $26.05; 70 per cent, $26.05. The median of $21.63 corresponds very closely with the 50 per cent bulk line. The weighted average cost of $25.10 corresponds very closely with the 66⅔ per cent bulk line.

Sheet 18 covers sheep, mixed cars, plural ownership. The 40 per cent bulk line cost is $25.83; the 50 per cent is $27.11; the 60 per cent, $28.67; the 66⅔ per cent, $29.75; the 70 per cent, $33.00. The median cost is $28.00, which falls between the 50 and 60 per cent bulk line cost. The weighted average cost, $30.74; corresponds to the $29.75 bulk line cost, with the 66⅔ per cent bulk line cost of $29.75.

[fol. 1571] Sheet 19 covers sheep drive-ins. The 40 per cent bulk line cost is $31.01; the 50 per cent, $33.61; the 60 per cent is $35.55; the 66⅔ per cent $37.02; the 70 per cent $37.02. The median cost was found to be $33.55, which corresponds fairly closely to the 60 per cent bulk line.

Sheet 20 covers sheep, seconds. The 40 per cent bulk line cost was found to be $14.59; the 50 per cent, $15.14; the 60 per cent, $17.00; the 66⅔ per cent, $17.89; the 70 per cent, $18.00. The median cost, $17.94, corresponds very closely with the 70 per cent bulk line, or the 71⅔ per cent bulk line, either or both being identical in this case, and also fairly closely with the weighted average cost which is $18.17.

Sheet 21 deals with sheep, buying, all classes. The 40 per cent bulk line cost was found to be $12.24; 50 per cent, $12.24; the 60 per cent, $12.24; the 66⅔ per cent, $15.57; the 70 per cent, $17.14. The median cost of $15.43 corresponds very closely with the 66⅔ per cent bulk line of $15.57. The weighted average cost, $14.86, corresponds fairly closely with the 66⅔ per cent bulk line.

[fol. 1572] On sheet 2 of Exhibit 23 in the case of cattle and calves, straight cars, plural ownership:

If 50% bulk line cost used, 57 firms out of 93 would exceed that cost.

If 60% bulk line cost used, 48 firms out of 93 would exceed that cost.

If 66⅔ bulk line cost used, 40 firms out of 93 would exceed that cost.

If 70% bulk line cost used, 36 firms out of 93 would exceed that cost.

On sheet 3 of Exhibit 23, cattle and calves, mixed cars, single ownership:

If 50% bulk line cost used, 35 firms out of 83 would exceed that cost.

If 60% bulk line cost used, 28 firms out of 83 would exceed that cost.

If 66⅔% bulk line cost used, 23 firms out of 83 would exceed that cost.

If 70% bulk line cost used, 23 firms out of 83 would exceed that cost.

On sheet 4, cattle and calves, mixed cars, plural ownership:

If 50% bulk line cost used, 44 firms out of 84 would exceed that cost.

If 60% bulk line cost used, 36 firms out of 84 would exceed that cost.

If 66⅔% bulk line cost used, 33 firms out of 84 would exceed that cost.

If 70% bulk line cost used, 31 firms out of 84 would exceed that cost.

In the case of cattle and calves, drive-ins, sheet 5:

If 50% bulk line cost used, 50 firms out of 89 would exceed that cost.

If 60% bulk line cost used, 43 firms out of 89 would exceed that cost.

If 66⅔% bulk line cost used, 39 firms out of 89 would exceed that cost.

If 70% bulk line cost used, 36 firms out of 89 would exceed that cost.

[fol. 1573] In the case of cattle and calves, seconds, sheet 6:

If 50% bulk line cost used, 48 firms out of 67 would exceed that cost.

If 60% bulk line cost used, 36 firms out of 67 would exceed that cost.

If 66⅔% bulk line cost used, 32 firms out of 67 would exceed that cost.

If 70% bulk line cost used, 31 firms out of 67 would exceed that cost.

In the case of cattle and calves, buying, sheet 7:

If 50% bulk line cost used, 34 firms out of 67 would exceed that cost.

If 60% bulk line cost used, 32 firms out of 67 would exceed that cost.

If 66⅔% bulk line cost used, 31 firms out of 67 would exceed that cost.

If 70% bulk line cost used, 29 firms out of 67 would exceed that cost.

In the case of hogs, straight cars, single ownership, sheet 8:

If 50% bulk line cost used, 50 firms out of 95 would exceed that cost.

If 60% bulk line cost used, 45 firms out of 95 would exceed that cost.

If 66⅔% bulk line cost used, 36 firms out of 95 would exceed that cost.

If 70% bulk line cost used, 33 firms out of 95 would exceed that cost.

For hogs, straight cars, plural ownership, sheet 9 of Exhibit 23:

If 50% bulk line cost used, 48 firms out of 92 would exceed that cost.

If 60% bulk line cost used, 44 firms out of 92 would exceed that cost.

If 66⅔% bulk line cost used, 37 firms out of 92 would exceed that cost.

If 70% bulk line cost used, 36 firms out of 92 would exceed that cost.

For hogs, mixed cars, single ownership, sheet 10.

[fol. 1574] If 50% bulk line cost used, 39 firms out of 84 would exceed that cost.

If 60% bulk line cost used, 28 firms out of 84 would exceed that cost.

If 66⅔% bulk line cost used, 26 firms out of 84 would exceed that cost.

If 70% bulk line cost used, 23 firms out of 84 would exceed that cost.

For hogs, mixed cars, plural ownership, sheet 11.

If 50% bulk line cost used, 46 firms out of 84 would exceed that cost.

If 60% bulk line cost used, 39 firms out of 84 would exceed that cost.

If 66⅔% bulk line cost used, 36 firms out of 84 would exceed that cost.

If 70% bulk line cost used, 32 firms out of 84 would exceed that cost.

In the case of Sheet 12, Exhibit 23, hogs, Drive-ins:

If 50% bulk line cost used, 54 firms out of 94 would exceed that cost.

If 60% bulk line cost used, 46 firms out of 94 would exceed that cost.

If 66⅔% bulk line cost used, 43 firms out of 94 would exceed that cost.

If 70% bulk line cost used, 40 firms out of 94 would exceed that cost.

In the case of Sheet 13, hogs, seconds:

If 50% bulk line cost used, 30 firms out of 60 would exceed that cost.

If 60% bulk line cost used, 27 firms out of 60 would exceed that cost.

If 66⅔% bulk line cost used, 21 firms out of 60 would exceed that cost.

If 70% bulk line cost used, 17 firms out of 60 would exceed that cost.

[fol. 1575] In the case of hogs, buying, all classes, sheet 14:

If 50% bulk line cost used, 15 firms out of 22 would exceed that cost.

If 60% bulk line cost used, 15 firms out of 22 would exceed that cost.

If 66⅔% bulk line cost used, 12 firms out of 22 would exceed that cost.

If 70% bulk line cost used, 11 firms out of 22 would exceed that cost.

For sheep, straight cars, single ownership, Sheet 15:

If 50% bulk line cost used, 36 firms out of 66 would exceed that cost.

If 60% bulk line cost used, 27 firms out of 66 would exceed that cost.

If 66⅔% bulk line cost used, 24 firms out of 66 would exceed that cost.

If 70% bulk line cost used, 24 firms out of 66 would exceed that cost.

For sheep, straight cars, double ownership, Sheet 16:

If 50% bulk line cost used, 33 firms out of 65 would exceed that cost.

If 60% bulk line cost used, 26 firms out of 65 would exceed that cost.

If 66⅔% bulk line cost used, 24 firms out of 65 would exceed that cost.

If 70% bulk line cost used, 24 firms out of 65 would exceed that cost.

For sheep, mixed cars, single ownership, Sheet 17:

If 50% bulk line cost used, 23 firms out of 49 would exceed that cost.

If 60% bulk line cost used, 20 firms out of 49 would exceed that cost.

If 66⅔% bulk line cost used, 17 firms out of 49 would exceed that cost.

If 70% bulk line cost used, 17 firms out of 49 would exceed that cost.

[fol. 1576] Sheet 18, sheep, mixed cars, plural ownership:

If 50% bulk line cost used, 35 firms out of 67 would exceed that cost.

If 60% bulk line cost used, 30 firms out of 67 would exceed that cost.

If 66⅔% bulk line cost used, 26 firms out of 67 would exceed that cost.

If 70% bulk line cost used, 22 firms out of 67 would exceed that cost.

Sheet 19, sheep, drive-ins:

If 50% bulk line cost used, 38 firms out of 78 would exceed that cost.

If 60% bulk line cost used, 30 firms out of 78 would exceed that cost.

If 66⅔% bulk line cost used, 24 firms out of 78 would exceed that cost.

If 70% bulk line cost used, 24 firms out of 78 would exceed that cost.

Sheet 20, sheep, seconds:

If 50% bulk line cost used, 15 firms out of 22 would exceed that cost.

If 60% bulk line cost used, 13 firms out of 22 would exceed that cost.

If 66⅔% bulk line cost used, 11 firms out of 22 would exceed that cost.

If 70% bulk line cost used, 9 firms out of 22 would exceed that cost.

Sheet 21, sheep, buying:

If 50% bulk line cost used, 22 firms out of 29 would exceed that cost.

If 60% bulk line cost used, 22 firms out of 29 would exceed that cost.

If 66⅔% bulk line cost used, 12 firms out of 29 would exceed that cost.

If 70% bulk line cost used, 9 firms out of 29 would exceed that cost.

[fol. 1577] When I say that a certain number of firms would have costs which would exceed the bulk line cost, that is equivalent to saying that the number of firms having costs in excess of that bulk line would have to be considered as inefficient in order to justify the use of that bulk line for this purpose. If there is too large a proportion of the firms included or excluded by giving bulk line costs, it would seem to indicate that the bulk line used is too low or else an excessive number of firms are inefficient.

If the standard of performance or theoretical performance is way in excess of actual performance, it is rather an

evident fact that the standard or theoretical volume of sales is erroneous, because in any piece of scientific work we always subject our hypothesis, or theory, to the test of what has actually happened, or what has actually been accomplished; and so necessarily any standard that deviates by a wide margin from what has actually occurred must be wrong.

Cross-examination of Dr. O'Neill.

By Mr. Dagger:

By an efficient firm I mean a firm that has reached that point where it has little or no unused capacity and whose unit costs enable them under the given conditions to compete fairly successfully, and to receive an income from [fol. 1578] such business which will cover costs including some pure profits. I am not thinking necessarily there of a firm that is receiving the highest profit, the profits earned to be the profits earned by Marshall's concept of the representative firms. What I mean by unused capacity here is that the salesmen and the sales force have about all they can do to handle the volume of business as it comes on to the market. I am thinking of course that it is going to come on the market, perhaps a large volume for the first three or four days, and during the time that this livestock flows on, these people are about as busy as they can be under the circumstances, and with an honest attempt to secure the highest prices possible for the grade of livestock handled by them. Now, there are various degrees of efficiency of course, and I am thinking of that one that is fairly close up to the—pretty well up, I should say, towards the top of the scale, not necessarily at the top, but somewhere within shooting distance of it.

Q. And as a result of your study in Exhibit No. 22 wherein you apply your correlation theory, I take it that you would expect to find that type of efficiency in a relatively small firm as well as a relatively large firm?
[fol. 1579] A. Oh, why, certainly, that there might be firms of a small size, and middle size, and large that might be efficient.

Q. In your opinion do you think the business might be so small as to make it impossible to have an efficient organization?

A. That might be true for a short period of time, but sooner or later that firm, if it doesn't grow, will be eliminated from the field unless they have plenty of staying power and wish to carry on a business for the good of their health. That is one of the reasons why I introduced the bulk line analysis, I assumed the percentage of the business was done by firms whose costs were too high. In setting a rate the Government cannot set up a rate so that all firms, regardless of their volume, regardless of the methods used can stay in business and make sufficient income to cover proper costs.

Mr. Dagger: Doctor, would the point at which you would fix the bulk line represent the line of demarcation between efficient and inefficient firms?

A. I would say that if one were to use 100 per cent bulk line, one would consider or believe that all firms operating in a market, regardless of costs, should be considered socially necessary for the performance or the action of an even market, and therefore would be regarded as such degree of efficiency as to secure a rate which would enable them to stay in business; but, I would not, could not, subscribe to any such doctrine, and I think no other reasonable group of men reasonably well-informed about any particular line of business would draw such, or use such a bulk line. I think they would perhaps go down, perhaps as low, some might go as low as 66⅔, some might use 70, some might put it as high as 75 or 80. During the war time the Government, as I recall, used a bulk line of 90 per cent for certain growers, set a price on which they figured 90 [fol. 1580] per cent the lowest, 90 per cent of the volume which came on the market could be covered, but those were under a war time situation, but now under the situation in which peace prevails, the bulk line might be fixed somewhat lower.

Q. Have you reached any definite conclusion as to where you would draw the bulk line in this case?

A. It wasn't my particular cog to do so, but I felt that if, where you leave it to a body of men who were reasonably well informed, a group, say, of ten or seven men, I feel quite certain that one of them would set the bulk line at less than 66⅔, and I am under the impression that if there was a fair degree of competition between the firms

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involved that a higher bulk line cost might be set even as high possibly as 75 per cent.

If I set a bulk line at 75 per cent it would be my general belief that those firms whose counts were somewhat higher were, at the time that the bulk line was set operating, at costs that were too high. But during any given year some firms whose costs might exceed 75 per cent, perhaps the next year might have costs which were within the 75 per cent, because from year to year, according to Secrist's study, the identity of the firms, so far as place was concerned, tended to vary. I do not know whether any of the firms included in this study are now operatinng at 100 per cent efficiency. I am assuming that if this business is like other businesses, that such would be the case. I think that such assumption is one that could be generally ac- [fol. 1581] cepted by people who are reasonably trained in business conditions and business technique. If I were delegated to determine the reasonable unit cost by the bulk line method, the considerations I would give to the case would depend upon whether I was actually confronted with the problem. I have taken a very careful comparison of all of the tests that were available as to the point to which it might be gone in any particular case. I would first consider or try to find in my own mind, or get the reaction of a group of men as to what they felt under give- circumstances and in connection with a given business, what percentage of the firms were, could, or might reasonably be regarded as operating efficiently. Now, I would take that in consideration first, then I would try to find out what the average market costs were. I would try to investigate to see over a period of years what firms or how many firms continued in business, how many firms failed, quit business or took the bankruptcy act, and as a result by all of the available data, I think one could arrive, with a fair degree of accuracy, at a bulk line which would be, which would grant a reasonable rate to the firms concerned. I would desire this collateral information with re- [fol. 1582] spect to the operations of the individual firms in addition to the statistical material which I have set up in my exhibits. One needs to use all of the data and tests available.

I understand that the unit cost which I have used states the appraised salary, appraised by a committee.

Q. Assuming now that the appraisal committee may give a considerable weight to the volume handled by a firm in fixing the salary or the value of the services of these owners, if that be true would that not tend to give you the very result which your correlation theory has given you?

A. In other words, is the coefficient of correlation which I have found from the point of volume and costs, unit costs, influenced by the appraisal of the salaries?

Q. Yes, if it be true that those salaries were somewhat dependent upon the volume handled by a firm. In other words, that a firm was one of large value or of large volume, the salaries tended to be high, if it were a firm of low volume the salaries tended to be low.

A. Well, if the firm was one of large volume and it gave a high salary it would tend to increase costs, to attempt to associate high volume with high costs.

Q. And vice versa, it would associate low volume with low costs?

A. Yes, well, if it associates large volume with high costs, it tends, would tend to—and this were offset, and this procedure were off-set by small volume with low salaries, one appraisal might offset other appraisals and not change the coefficient of correlation. It depends upon the degree of offsetting involved.

[fol. 1583] Q. The result of that might be to bring you out to about the correlation coefficient actually arrived at, might it not?

A. Yes, it might, if it were offset, if there was a perfect offset there would not be any change in the coefficient of correlation.

I have not in this case made any study of the volume handled by each firm in relation to the organization maintained for handling that volume. I examined several, but didn't make any statistical analysis, just more or less of a casual observation of the figures.

Mr. Dagger: Are you in a position to state what influence, if any, the volume per salesman had on the unit costs which were used by you in your study, or did you make any analysis of that?

A. My assumption was in using these, when these figures were given to me, that unit costs were based upon the study of the actual conditions in the yards. I didn't make the

time study nor the cost study, but I took the figures as they were given to me.

[fol. 1584] GOVERNOR HOWARD M. GORE, a witness for the Respondents, having been sworn, testified as follows:

Direct examination:

I reside at Clarksburg, West Virginia. I commenced services with the Department of Agriculture at Washington on November 11, 1921. I was then associated with the enforcement of the Packers and Stockyards Act. Later I became Assistant Secretary. I was later Secretary of Agriculture in the cabinet of President Coolidge for a brief period. Upon leaving that office I became Governor for the State of West Virginia. Since that time I have been Commissioner of Agriculture for the State of West Virginia, for two years.

I have been a livestock producer all my business life and am still a live stock producer in West Virginia. I was a member of what is known as the Committee of Fifteen which designed the general structure of what was first used in the co-operative marketing of livestock in central markets.

I have been subpœnaed to testify in this case. I was one of the arbitrators who considered the question of Chicago commission rates as a result of an agreement entered into between the parties and approved by the Department in 1923.

[fol. 1585] I might make an explanation there. There were several other markets involved in connection with Chicago to which rates were applied at the same time, the award being made simultaneously, as I remember, effecting practically all the Mississippi basin markets. Mr. Dagger was my co-arbitrator. The agreement leading up to the final official action, was the action on the part of the parties which took place at Kansas City in which it was agreed that Mr. Dagger and myself would be accepted as the arbitrators. With particular reference to Chicago, Mr. Dagger and I went to Chicago and conducted an open hearing for the purpose of developing information in connection with the handling of business at that market.

An opportunity was given all persons desiring to be heard, to be heard, and a goodly number of producers ap-

peared. We received the cooperation of the market agencies at Chicago, the producing interests and the Government. The Department staff cooperated fully in helping us to arrive at the facts on which to base a conclusion. We made investigation pertinent to the proper aspects of marketing and those factors that entered into the determination of price, arrivals and business from day to day, and in addition to that, if you will pardon the suggestion, I have had lifelong experience in dealing with markets and market agencies and the sale, processing and distribution [fol. 1586] of the product. In other words, I have undertaken in connection with my business, before and after I was with the Department, and since that time have kept as well informed as a person can in keeping in touch with the activities entering into the determination of value of livestock to the producer.

After we had concluded our investigations we prepared a report. (Respondents' Exhibit B to the Complaint is the award of the arbitrators.)

The volume of receipts and volume handled in the ordinary course of business by a firm was, of course, one of the prime factors in determining the rates, and the quality and character of services rendered in connection with it were one of the prime factors in determining a fair compensation or reasonable compens-ion. The facts are these; that today, as compared with the time of that arbitration, it requires a much more skillful and a much better trained, and a person with a much better knack of knowing how to merchandise livestock, in all kinds of livestock that are marketed at the center markets, than it did at that day and time. At that day and time a carload was a string consignment of the larger units which make up a substantial part of the livestock received at a central market like Chicago [fol. 1587] today. If you have persons gifted in the value of loads of say cattle, as compared with other loads of cattle, they require a very high degree of skill of course, but it did not require the skill as you break carloads down into the broken lots, that it does today. Today in markets you may break a load of livestock into a number of grades and sell it at different prices, rather than against the carlot prices of days gone by. The development of the cooperative movement and cooperative shipment, where one owner may have a number of different grades in the same kind of livestock, requires a multiplicity of sales and serv-

ices that were not necessary in the days probably prior to the year 1920, using that as an index figure as it is in the sale of livestock today. In other words, persons who handle what we might call the broken lots today, must be skillful. They must be trained. In the olden days the lower-priced folks usually handled what we call the odds and ends, or the broken lots. Today the thought in marketing is to protect the person with one animal whose financial fortunes are tied up in that animal, just as certainly as myself who always ship in one or two carlots. There can be no question about the necessity for furnishing higher quality of salesmen in the grades that most generally prevail, in the type of shipments that most generally prevail today, as against 15 or 20 years ago.

[fol. 1588] The attempt was made in the arbitration to bring the rates certainly within the class of a reasonable rate, being intended to be fair both to producer and to processor—both to producer and to salesmen. Now, in marketing livestock there are things you do not put in the record and you cannot put them on paper. Salesmanship is a quality of the individual, and the ebb and flow of a market business on any market day may be ten up or ten down on the varying loads as the difference between the stock may look, a difference on the part of the salesman, even on established market business. At the time the award was made in Chicago, there were receipts of about 850,000 hogs a month. No one processor, no one can buy hogs closer than a nickel or a dime. Ten cents up or ten cents down in that month would mean, if the producer got an even break, 50-50, say on half of them he got the margin and on half of them the purchaser got the margin, would mean a sum of money almost equal to $200,000 on the receipts of hogs in one month in the city of Chicago. You apply the same principle on your cattle all the way down the line and then multiply that by the number of markets in this nation, and multiply the trading margin on a basis say that is fixed at eight cents—eight [fol. 1589] cents up, ten up and ten down, when multiplied by the amount of stock received on your Chicago market results in a staggering figure, and if the defensive or selling side is not as well equipped as the buying side, you can see that they would easily lose; that your shippers on the Chicago market would lose millions of dollars on the simple

trading market, which no expert can determine. Yesterday I had two loads of cattle on the market. One load of cattle, I think, was one of the best loads of pure bred cattle that I ever produced. They sold one pen at $4.50. Not more than just one or two pens away, a load of cattle was put off and split into a couple of loads. The less desirable ones were put in the second load and four light winter cattle which I did not want to winter were put in the other load. The first load brought $4.50 and the second brought $4.35. The man who sold the $4.50 load of cattle sold them at the top of the market for yesterday. The man who sold the second load sold it at 25 to 35 cents above the market in any circumstances and under normal market conditions he could sell it at least 65 cents above the market and thereby render a service to me. In other words, the net to me on the second class brought me almost as many dollars per hundredweight as one of the best loads I ever followed on the road. It represents superior salesman-[fol. 1590] ship. On the very next day the situation might be reversed, if you get what I mean. You can not measure service of that kind by 50 cents a load or $1.00 a load.

I do not choose my commission men on the basis of the large volume he sells. I do not believe that superior service is rendered by the man who handles or sells the greatest volume. I do not believe that the quality of service rendered or the efficiency should be based or determined upon the volume of sales made by the man or by the quality of the sales he makes. A man develops a peculiar quality of handling certain grades, qualities and kinds of livestock. Maybe one will be a good hog salesman, one may be a good sheep salesman, one may be a good cow or steer salesman, maybe a good carlot salesman. Maybe he would be absolutely helpless down in the jackpot. The situation is this: you may ship half a dozen loads of livestock to the same market. You may choose three or four different firms because of their peculiar fitness, to fit themselves to the type of stock you offer as your understand it.

It is a matter of common practice that the major buyers of livestock in the several markets of the country do not go into the market to buy until they have their instructions from the central office, usually Chicago. The selling side [fol. 1591] may or may not have that information. These folks that go into the market representing the processors

know the condition of the retail trade. They know the condition of the packers themselves. They know what is moving and what is not moving. They have first hand information with respect to the entire outlook, from the purchase of their animal until it reaches the ultimate consumer. The selling side do not have such an advantage. There is a natural monopoly on the buying side. I do not mean a vicious monopoly. There is a buying monopoly on the selling side not available to the man in the foothills of this country which we have not counteracted and which we could have counteracted if we had been intelligent about it.

The shipper of livestock has the choice of selling his livestock himself through his own cooperative, or of selling it through a company organized for profit, or he may dispose of his livestock direct to the packers at the various points set up since this award went into effect. I had rather an active part in marketing conditions about marketing centers, so that cooperatives could operate freely, and we also took away from the old-line people every incentive of advantage they had built up so that all groups might benefit by it.

[fol. 1592] The Chicago Producers Company, a corporation, handles the largest volume of any single firm on the Chicago market today. Also in Pittsburgh, where I happen to be a director. Incidentally I might say that the rates in Pittsburgh are much higher than those in effect at Chicago. I also want to say that we have not made any refunds lately. I am speaking from the record. We have not earned a profit that we felt we dared to surrender part of it back. I believe, based on my experience, that the livestock rates fixed by the Department of Agriculture should provide a sufficient sum of money to maintain the market agencies on a high basis enabling them to employ the most skillful persons to perform selling services and other services, and that the failure of the Government to make adequate provision in that regard would be very damaging to the man who raises and sells livestock in this country. To do otherwise would be to weaken the protection of the Government to the man selling livestock through these markets. To in any way weaken a situation that would attract persons of apparent capability and ability into this large industry—one of the largest in the country—is something which should be avoided under all circumstances. To drive

out such people would be damaging. The rule of reason cannot always be applied to those services, the details of [fol. 1593] which cannot be made a matter of record but which are the essence of success or failure of that individual's activities.

Cross-examination:

I am an actual producer and shipper of livestock. I usually ship to the Pittsburgh yards or the Baltimore, New York, Philadelphia or Lancaster. I haven't made a shipment to the Chicago yards I would say for ten years. That was subsequent to the arbitration award. Livestock is shipped in smaller numbers of head per shipment today. In the first place on account of the truck shipments and in the second place on account of the increase of cooperative shipments. This has brought about what you might call multiplicity of kinds and ownerships in one car.

There has been a constant increase in cooperative marketing over the periods of years which probably began with definiteness and certainty about the year of 1921. In the arbitration award which I have identified, occurred this statement: "A very large per cent of the shipments of livestock at the four markets is owned by two or more persons, frequently the owners numbering as high as fif- [fol. 1594] teen and twenty to the car." I would say the cooperative shipping began having some orderliness and substance about it, and it began to spread more generally into the livestock, the general livestock area along about 1920. That is just a matter of recollection. I wouldn't state it as a definite fact. I would say there was a greater number of owners represented per car than a few years previously. It is just a matter of observation in communities in which I have acted. I do not have the figures; I am simply observing from the territory that I have operated in. To make a comparison between conditions as of the time of the arbitration award and of the conditions as of today with regard to multiplicity of ownership and observing for the territory with which I am familiar, the multiplicity of ownership represented per car has increased materially.

The territory with which I am familiar in the sense of contact, is western Pennsylvania, Ohio, and West Virginia, and part of Virginia and Maryland. My general informa-

tion, of course, I have kept actively in touch with such publications as come out of the market centers, and with the journals of the cooperative associations and the reviews of the Department of Agriculture.

[fol. 1595] In the arbitration award, page 9, occurs the statement that in the question of rates the compensation should be reasonably remunerative to those efficiently functioning as market agencies. We considered the question of rates from the standpoint of the shipper. There is no inconsistency between the statement that we considered it from the standpoint of the shipper and the language of the arbitration. From the standpoint of the shipper, of course, in relationship to his agency, the two happen to be together in a case of that kind. We attempted to be fair in relationship to all of the factors that should be properly considered in the marketing of livestock. I spent many weeks at the Chicago yards. I do not recall how much time was consumed in witnesses appearing and testifying at the Chicago yards.

We were not selected because of our going into a yard and interviewing people, not just simply, merely as an examiner of witnesses, we were thought to be more than that. We were thought to have the logic of the business and could apply what people said to us in keeping with the logic that must necessarily be pursued in differentiating between conflicting statements, and exaggerated statements and true [fol. 1596] statements, and all of that. At the time we were interviewing witnesses there were estimates made as to how much a salesman could sell in the course of a year or an estimate as to what would be a fair performance in the course of a year. But marketing livestock isn't the case of going in and pricing, and opening a gate and weighing it; that is only the mechanics of it. The amount of livestock that a man may sell—I have had this experience in markets, that I have spent all day trying to sell one old balogna cow because the right buyer didn't come along. I have lately priced my own cattle and the buyer will say, "I will buy the cattle and take off a dime"; maybe the next load I can show to twenty-five buyers, and maybe the conditions now that applied to a parallel shipment six months later might be entirely reversed. If a man needs a load, say of 1000-pound steer cattle of a certain finish, if he needs them and has an outlet, maybe he has an order for them, a letter for them, he is a better buyer than if you have to persuade

him to buy. So all those things enter in. And so today I say a man may be a good salesman of a certain type of livestock and, switch him over to another division of the same species, and then he is lost. There are many other things that enter into the handling of livestock and they can't be reduced to figures. You must exercise judgment I think to give weight to all of the factors that enter into the sale of livestock.

[fol. 1597] Between buyer and seller there is an entirely different degree of position. The buyer who refuses to buy hasn't anything to worry about, that is, except that he might have overlooked a good buy or he had an order for that type and failed to buy and all that, but the worry of possession or having made a bad trade, or finding an outlet is not on his shoulders at that time, but the man who has that livestock too far removed from its home to be returned and it must be sold within a few hours or become what we call "stale stock" and with increased expenses to the shipper, yardage, water, feed—he is not in as secure a position as the buyer who refuses to buy because one must act within definite limitations as to time, both with respect to the condition, or quality, or acceptability of the animal, as well as the expenses. The other man does not have to worry about what he does not buy.

It is my view that the buyer more nearly fixes the market than the seller.

Q. Now, Governor, you have mentioned the quality of service rendered by the market agency as being a factor in making rates, is that correct?

A. That is right.

Q. Can you tell me how you would evaluate quality of the service rendered and what part of this commission rate you would build up on that one fact alone?

[fol. 1598] A. Judge, you asked me a difficult question to phrase. I mean you asked me a question to answer which is difficult to phrase. Those things you have to pass on, you might say, as a common sense value, I mean as a common sense appraisal which you might put upon it.

. . . . . .

Mr. Miles (continuing): Governor, in your opinion it would be impossible to evaluate the services rendered by

market agencies from the standpoint of pure mathematics, is that correct?

A. No, sir.

Q. You believe that it could be evaluated then from the standpoint of mathematics?

A. If you will take all the factors into consideration. You must, in all matters, use many factors in making up your judgment.

Q. All right now, in your opinion is there any set rule or mathematical formula which could be used in fixing the value of services handled by the market agency?

A. That would be an important factor in making up that judgment.

Q. All right now, can you tell us exactly what figures you would have in mind, what function you would use, in fixing a rate schedule?

A. You take in a lot of territory on the question Judge. I am very glad to answer it.

Q. I wish you would.

A. In the first place of course the time factor and finances that enter into it, and the various services of various kinds and character, all those factors that play in on the performance of the service including the time element, the risk and responsibility, the time required for training, just like [fol. 1599] training you for the law. All those things would enter in materially, but what you do, would take, what you would do you would take your figures, what are the reasonable number of loads a person might sell under reasonably fair conditions, what are the expenses incidental to that, what is the stationery cost, and all the charges and all those factors that would enter in they build up your bases on which you would then begin to evaluate the services; then, what would be a reasonably fair compensation for that kind and quality of service as compared with that service say on the buying side. It is a known fact that seldom the buyer and seller meet as agencies that the buyer does not receive a larger compensation, the buyer receives the larger compensation at the stockyards than the seller. Now, then, as long as you are reasonably within line with what is paid or would be accepted as the fair compensation by a person under these circumstances, but say one of the great packers would be there buying, as long as you are not above him or substantially below him in the field occupied by him to the seller, you would certainly at least begin to tend toward

fairness to the little fellow. The actual facts are that the buyer, as a general proposition is a more highly paid person than the selling agency. Those things are a matter of record.

Q. Now Governor, you have told us that you would take certain factors and you would try to evaluate those factors and then you total them?

A. Yes, in other words, you take all of the known costs and the reasonable physical application of the services to the time element that would be used in marketing. There are times that such service would be available. In other words, on Saturday afternoon the best salesman is incapacitated because that is an inactive period. In other words you would take and give value to the known things about you could measure accurately by time, and such other [fol. 1600] things as would enter into it. Then you begin to think about the value of the commodity and what would be fair for this sort of a service in keeping with the value of the commodity for the seller to pay, what would be fair to him. Now all those things would enter in.

Q. Well now, Governor, having taken the various factors which you have mentioned, is there any other method known to you by which you would establish a commission rate?

A. Well now then you take—you want I suppose a yes or no, but I would prefer not to answer it that way. You take the known factors that may be determined and apply common sense and you use common sense in the interpretation of that service and those facts enter into a practical reality to a wide-flung industry that has varying shades of color wherever you lead it.

Q. Well now, what rate did you fix or what cost did you find to be the cost of selling cattle in the Chicago yards?

A. As near as we could interpret it, I think all the facts and figures the record shows.

Q. The record shows a total commission rate for everything done by the commission firm but does not show a breakdown on that total and does not show how much you allow for the single item of salesmanship.

A. We were asked to fix a fair compensation in doing all things necessary in marketing livestock under the practices then in vogue.

Q. And you did not then find the cost of salesmanship or cost of selling?

A. We certainly did.

Q. Well do you remember what that cost was?

A. We certainly covered it as a matter of judgment, taking into consideration all of these factors. Now to say we set up so much to be paid a man for opening gates or driving livestock down to the scales, that was an impossibility.

[fol. 1601] Q. And you did not do it?

A. We tried to find a practical basis to apply to the individual firms that were covered.

Q. But let me put it this way; that you actually did not set up various items?

A. Sir?

Q. You did not set up various items, like selling, yarding, office work, management and so forth?

A. We certainly did in our minds, in our judgment, in our own way in determining the facts.

Q. You did not set it up in the arbitration award?

A. It wasn't necessary.

Q. Granted.

A. We weren't asked to do that. We were asked to give a fair rate. You asked me if we set it up ad seriatim. Just as I illustrated we didn't do that but we did take into consideration all of the facts and costs that entered into all of those items before we could arrive at a figure that we thought was fair.

Q. Now with reference to salesmanship, you reached what you may call a fair salary without deciding what that fair salary is what you had in your own mind?

A. That is what the composite salary factor should be and that was the proposition that we argued and considered.

Q. Now to what selling capacity did you apply that salary?

[fol. 1602] A. Well I don't recall the exact figures. I do recall that we tried to apply it to the reasonable amount of service that a person might perform in their given field under the average circumstances which in livestock selling varies from time to time.

Q. And that was not limited to actual selling?

A. No, sir.

Q. That is what you believed a person should or could perform?

A. What?

Q. That is what you believed a person should or could perform?

A. In other words, judge, if here was a firm had a cattle salesman employed at $5000 a year, and he only sold three or four cars a week, why, he went out—why use that exaggerated figure? We didn't take that into consideration, we tried to take into consideration what would be a reasonable amount of service performed, just as today I finish the day's work, I am tired. I have done a day's work, that is just the only way of putting it.

You ask if we did take into consideration the time of yardage, did we follow it out and try to arrive at a practical figure, what cost of yardage was,—determined upon the performance—the figure was 17, what appears to be a figure 17 for a load of cattle. We took into consideration the matter of office salaries and went thoroughly into all [fol. 1603] records that were available and give every person who felt an interest and had an interest, whether that be a producer or market agency or otherwise, from the facts and figures that we were able to take from the records through our own agency, the Department of Agriculture, and all that we did—we took into consideration the weight of such expenses as derived by fact and matter of record on that, in trying to arrive at a base on which we would make an award. We went into administrative and general expense, business-getting. We did not take an average of the expenses of the various firms. We only took into consideration those firms that seemed to be functioning healthfully.

In the award, we had in mind the development of the services as the facts indicated, price relationship and service costs and all, and when we finally reached a conclusion we felt, as I recall it, that the service charges on the Chicago market could be performed for lower cost than at the time we were chosen as arbitrators, and that one of the factors that entered into it was value of livestock which had suddenly precipitated from war-time prices down to much lower prices, and with all of those factors bearing in

mind, we lowered commission rates in the stockyards in Chicago.

[fol. 1604] Mr. Miles: Let us assume that a firm received four cars a week only, that is, 208 cars per year, in your judgment should the commission rate be such as to keep that firm in business?

* * * * * * *

The Witness: The thought is this, now you are going to determine this proposition, you go into a yard, let us take one example, one firm may sell so many lots and another firm may sell different, either more or less, you take all your factors into consideration and see about what would be the extreme in a large volume and in a low volume. You try to get at what would be a practical average, what would be a practical average. Now, then, if it would appear that 4 loads a week are too few, that wouldn't be taken into consideration, or if we go into one of the larger firms they do what you might call an extensive and extended business, and highly financed, and highly organized, and all that. I would eliminate them to a certain extent. You keep them in mind but you try to get out of the conditions that surround that market what would be a fair volume of livestock. Then, the person who handles too few would have to accept less remuneration because he only had 4 as the basis of a fair and reasonable determination. Does that answer the question yet?

Mr. Miles (continuing): Practically. Let me put a specific question, Governor: Now, the record shows that one firm—I am not now dealing with salaries—but the firm received but 37 carloads of cattle in one year. Do you think that a rate should be high enough to enable that firm to remain on the yard?

A. You mean depending on the income from the 37 loads of cattle?

Q. Yes, sir.

A. I would not.

Mr. Miles: I think that is all, sir.

[fol. 1605] Redirect examination:

I would accept the actual performance of the average salesman in the Chicago market, as evidence of a sufficient

performance to justify the making of a rate. That is determined by the amount of time, and the industry, and pursuit, and the person, the service, of the reasonable amount of service purported in the employment at the time of that award, my answer would be that the average person would perform a reasonable service that might be considered as the unit of service.

Q. Now, Mr. Gore, you are personally acquainted with many of the prominent salesmen, or many of the salesmen on the Chicago market?

A. Yes

Q. And have been for years?

A. Yes.

Q. I will give you an illustration: let us take Emil Ingwersen, with whom you have been acquainted over a long number of years. You know his general reputation for selling livestock and you know his ability?

A. Yes.

Q. You also know Emmett Fulkerson?

A. Yes.

Q. In the case of those two firms the average cattle sales in the case of the National exceeded 1000 cars per salesman. In the case of the Ingwersen firm, it was less than 300. Do you believe that you should give any consideration to the talents of Emil Ingwersen and the amount of work that he may put on a market, or do you think that you should accept an average so high that no other firm could attain it?

[fol. 1606] A. The situation would be this. At first you would examine to see if Mr. Ingwersen's activities were a reasonable amount of work performed. Of course you would take into consideration in the case of the National, Fulkerson's concern, of course you have to give weight to that. Now you would attempt to find, in the case of Ingwersen "Did he perform a reasonable amount of service" and so forth, and if he did of course he was entitled to be taken into consideration. If upon the facts he did not—suppose they only come once a day and only stayed two hours, three hours, four hours, all of those factors would enter into whether he would be considered or not.

A carload of livestock does not represent to me a unit of work, nor a fair basis for arriving at the amount of

work. It may not be said with fairness that a man must sell a given number of cars of livestock in a given length of time. That is not a true yardstick at all.

The respondent rested.

[fol. 1607] In United States District Court

Order Settling Statement of Evidence

It appearing that notice of the lodgment of the within and foregoing Statement of Evidence has been waived by the appellees and that notice of the time of the proposed settlement thereof has been likewise waived;

And it further appearing that said Statement of Evidence is true, properly prepared, and contains all of the testimony material to the appeal, taken before the Secretary of Agriculture vs. C. H. Acker, etc." which testimony was introduced into this record as Petitioners' Exhibit No. 13;

And it further appearing that the portions of said Statement of Evidence appearing in the exact words of the witnesses is necessary in order that the sense and understanding thereof may be determined;

It is therefore ordered that said Statement of Evidence be settled, approved and allowed as a true, complete and correct statement of all of the evidence taken before the Secretary of Agriculture material to the h-aring of the appeal, and that the same be filed with the Clerk of this Court and become part of the record on appeal as a portion of Petitioners' Exhibit No. 13.

Dated at Chicago, Illinois, this 17th day of December, 1935.

Samuel Alschuler, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fol. 1608] Stipulation re Narrative Statement of Evidence

The parties hereto stipulate and agree that the foregoing Narrative Statement of Evidence is true, properly prepared, and contains all of the testimony material to the

appeal, taken before the Secretary of Agriculture in Secretary of Agriculture vs. C. H. Acker, etc. Bureau of Animal Industry, Docket No. 402, introduced in this record as Petitioners' Exhibit No. 13; and the defendant appellees waive notice of the lodgment thereof, and notice of the time of the proposed settlement thereof.

Geo. I. Haight, Counsel for Appellants. Wendell Berge, Counsel for Appellees.

[fol. 1609] COMPLAINANT EXHIBIT No. 45

Copy

March 30*1* 1933.

Mr. Charles Schultz, President, Chicago Livestock Exchange, U. S. Yards, Chicago.

DEAR MR. SCHULTZ:

We continue to receive almost daily, letters similar to those enclosed which demonstrate in our minds quite conclusively one of the main reasons why receipts at this m arket continue to show a steady decrease.

Three interests are principally involved, namely: The railroads with their high freight rates, the Union Stockyards and Transit Company with their high prices charged for feed and yardage, the stifling of yard trading with their charges for yard service and last but not least, the Chicago Livestock Exchange's rate of commission, which is causing so much complaint in the country.

For many years we have contended and still contend commission rates should be based on a percentage of the gross sale of live stock. Had that commission rate been established years ago, the commission merchant would have prospered when times were good, along with the farmer and then when prices went to a low level, his charges would have gone accordingly and we would have heard no complaint from the producer regarding them.

Would it be possible to get those three interests together with representatives from each to work on a plan of that kind?

We believe it would do more to help restore the much needed confidence in the Corn Belt, where the big end of our agricultural population resides, than all the Farm Relief measures that have been passed or proposed.

Do you think it worth consideration? If so, will be glad to discuss it further with you.

Yours truly, (Signed) Walters & Dunbar.

CAD*M.

[fol. 1610] COMPLAINANT EXHIBIT No. 61

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
Jan. 1	.....	...	...	...	155	...	3,393	.....
" 2	73	10	...	1	224	...	226	.....
" 3	.....	...	...	..	.....	...	.....	.....
" 4	1,233	5	40	5	1,281	4	3,820	.....
" 5	553	14	23	5	753	20	2,194	32
" 6	550	18	10	1	616	40	3,187	245
" 7	702	74	9	2	937	...	3,458	63
" 8	312	16	17	..	280	45	2,684	374
" 9	.....	...	...	..	283	...	.....	.....
" 10	.....	...	...	..	.....	...	.....	.....
" 11	662	54	23	5	914	47	6,888	1
" 12	180	57	32	2	152	37	2,383	.....
" 13	775	3	15	4	630	38	2,967	.....
" 14	302	3	...	1	564	107	5,235	.....
" 15	.....	...	...	..	455	...	1,849	.....
" 16	.....	...	...	..	.....	34	.....	.....
" 17	.....	...	...	..	.....	...	.....	.....
" 18	518	45	22	1	1,188	11	3,561	.....
" 19	171	13	...	4	287	11	3,166	.....
" 20	299	...	11	..	684	12	4,265	97
" 21	298	6	...	7	663	...	2,217	.....
" 22	70	...	...	..	528	22	1,332	.....
" 24	.....	...	...	..	.....	...	.....	.....
" 25	795	1	16	9	1,482	101	2,259	30
" 26	47	21	....	6	287	95	5,930	60
" 27	640	33	11	7	242	20	3,006	158
" 28	214	13	...	3	599	...	3,138	32
" 29	84	26	...	2	485	10	3,359	3
" 30	.....	...	...	..	528	...	349	.....
" 31	.....	...	...	..	.....	...	.....	.....
"** 23	.....	...	...	..	333	32	251	.....
Totals.....	8,478	412	229	65	14,550	686	71,117	1,095

**To be inserted under January 22.

[fol. 1611]

Feb. 1	703	16	19	1	278	..	2,341	123
" 2	364	18	38	1	279	45	1,678	40
" 3	290	67	15	..	408	49	1,684	86
" 4	118	13	23	2	296	...	3,410	299
" 5	.....	7	...	2	324	88	2,752	.....
" 6	.....	...	...	..	.....	...	230	.....
" 7	.....	...	...	..	.....	...	.....	.....
" 8	571	80	13	13	1,935	49	4,965	45
" 9	421	6	...	..	286	65	1,474	3
" 10	525	43	5	3	317	15	3,008	1

COMPLAINANT EXHIBIT No. 61—Continued

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
Feb. 11	341	1	1	4	469	48	4,558	.....
" 12	84	...	...	..	648	82	1,380	.....
" 13	.....	...	...	..	168	...	.....	.....
" 14	.....	...	...	..	.....	...	.....	.....
" 15	641	40	24	1	735	40	3,313	119
" 16	655	88	36	2	371	14	1,943	424
" 17	715	76	11	1	518	9	2,392	.....
" 18	517	21	11	6	618	143	3,302	316
" 19	60	...	11	2	306	17	1,279	.....
" 20	.....	...	...	..	115	...	.....	.....
" 21	.....	...	...	..	.....	...	.....	.....
" 22	911	1	25	..	819	...	2,575	32
" 23	322	64	7	14	28	13	2,195	18
" 24	442	29	9	3	692	13	1,902	147
" 25	429	9	3	3	560	28	2,419	.....
" 26	214	...	...	2	512	13	714	.....
" 27	.....	...	...	..	.....	...	.....	.....
" 29	959	34	59	9	314	136	2,986	.....
Totals.....	9,282	613	310	69	10,996	867	52,500	1,653
[fol. 1612]								
Mar. 1	381	2	21	7	430	1	1,394	.....
" 2	640	...	...	..	.....	48	2,146	.....
" 3	692	29	...	1	49	43	2,862	.....
" 4	99	38	3	..	264	...	1,406	.....
" 5	.....	...	...	..	147	...	.....	.....
" 6	.....	...	...	..	.....	...	.....	.....
" 7	694	43	10	1	453	148	1,932	.....
" 8	247	7	13	10	172	16	1,923	.....
" 9	742	31	...	..	974	25	1,153	191
" 10	489	84	10	3	302	72	1,537	108
" 11	134	9	...	13	428	66	461	.....
" 12	.....	...	...	..	80	...	.....	.....
" 13	.....	...	...	..	.....	...	.....	.....
" 14	870	37	49	15	1,123	11	1,827	1
" 15	141	10	11	4	247	43	1,149	100
" 16	669	3	...	1	136	44	3,485	50
" 17	240	20	...	3	325	17	1,324	203
" 18	57	3	...	..	377	12	993	.....
" 19	.....	...	...	..	.....	...	.....	.....
" 20	.....	...	...	..	.....	...	.....	.....
" 21	754	6	35	..	714	...	3,109	73
" 22	402	18	10	..	79	...	2,564	.....
" 23	1,187	39	6	..	146	...	2,681	.....
" 24	328	36	22	8	200	41	2,263	.....
" 25	61	...	...	..	643	...	1,173	.....
" 26	.....	...	...	..	.....	...	.....	.....
" 27	.....	...	...	..	.....	...	.....	.....
" 28	627	18	19	8	408	7	1,619	.....
" 29	311	21	1	..	170	26	1,618	.....
" 30	327	1	2	3	284	15	2,404	1
" 31	242	2	20	..	310	7	3,050	81
Totals.....	10,334	457	232	77	8,461	642	44,073	808

COMPLAINANT EXHIBIT No. 61—Continued

[fol. 1613]

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
April 1	219	2	...	..	128	30	.....	.....
" 2	.....	...	...	..	150	...	1,416	.....
" 3	.....	...	...	..	.....	...	.....	.....
" 4	509	39	60	..	1,054	9	4,460	91
" 5	238	69	14	2	487	4	1,423	.....
" 6	707	21	15	4	.....	2	1,746	79
" 7	335	33	...	2	213	18	5,142	55
" 8	164	32	...	1	315	8	2,718	.....
" 9	.....	...	...	..	.....	...	475	.....
" 10	.....	...	...	..	.....	...	.....	.....
" 11	1,356	62	9	..	872	25	3,645	107
" 12	465	40	12	15	265	5	3,984	.....
" 13	532	17	2	..	576	...	3,785	.....
" 14	235	11	...	..	486	...	3,704	.....
" 15	98	2	...	..	.....	3	1,772	.....
" 16	.....	...	...	..	.....	18	.....	.....
" 17	.....	...	...	..	.....	...	.....	.....
" 18	647	18	45	..	672	116	2,216	.....
" 19	212	25	22	1	330	40	1,918	52
" 20	575	55	23	1	86	2	4,723	.....
" 21	406	1	2	2	440	1	3,154	51
" 22	115	2	...	1	70	...	1,025	.....
" 23	.....	...	...	..	.....	...	.....	.....
" 24	.....	...	...	..	.....	...	.....	.....
" 25	682	4	17	1	448	56	3,754	156
" 26	402	44	16	..	287	91	3,814	10
" 27	700	34	6	4	345	35	2,141	.....
" 28	214	10	8	1	336	79	2,603	.....
" 29	.....	5	...	2	.....	53	455	.....
" 30	.....	...	...	..	142	...	.....	.....
Total.....	8,811	526	251	37	7,702	595	60,073	601

[fol. 1614]

May 1	.....	...	...	..	.....	.....	.....	.....
" 2	640	75	31	7	769	112	1,618	.....
" 3	334	13	2	..	29	85	4,323	118
" 4	754	23	4	3	553	39	3,882	10
" 5	403	23	...	..	431	102	2,784	.....
" 6	154	11	...	..	202	.....	486	.....
" 7	.....	...	...	..	111	.....	.....	.....
" 8	.....	...	...	..	.....	.....	.....	.....
" 9	1,462	24	13	2	1,553	101	1,654	.....
" 10	399	30	61	..	1,153	69	2,771	.....
" 11	452	73	...	2	255	54	1,774	.....
" 12	55	10	...	..	267	.....	2,266	.....
" 13	.....	2	...	1	439	142	1,007	.....
" 14	.....	...	...	..	.....	.....	.....	.....
" 15	.....	...	...	..	.....	.....	.....	.....
" 16	513	44	23	1	433	70	1,479	.....
" 17	507	82	...	3	558	24	1,748	.....
" 18	666	146	4	..	504	73	2,096	29
" 19	212	4	...	1	88	150	962	1
" 20	51	3	...	2	202	61	121	.....
" 21	66	1	...	..	263	.....	.....	.....
" 22	.....	...	...	..	.....	.....	.....	.....
" 23	1,052	100	17	2	486	32	1,237	.....
" 24	474	6	...	..	109	106	2,447	.....
" 25	425	5	...	..	539	158	877	.....

COMPLAINANT EXHIBIT No. 61—Continued

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
May 26	166	28	...	5	372	26	2,362	.....
" 27	48	7	...	..	97	27	1,292	.....
" 28	.....	...	...	..	.....	.....	280	.....
" 29	.....	...	...	..	.....	.....	.....	.....
" 30	.....	...	...	..	.....	.....	.....	.....
" 31	587	59	10	2	784	4	1,426	.....
Total.....	9,420	769	165	31	10,144	1,435	38,892	158
[fol. 1615]								
June 1	832	26	6	..	74	37	1,925	7
" 2	300	35	...	..	414	24	1,740	134
" 3	47	1	2	..	476	32	1,777	.....
" 4	.....	...	...	..	271	...	1,048	.....
" 5	.....	...	...	..	.....	...	.....	.....
" 6	1,009	70	12	6	659	27	1,513	12
" 7	244	66	66	3	37	110	668	29
" 8	898	14	11	5	284	33	694	102
" 9	479	59	6	2	298	88	154	.....
" 10	32	...	...	1	.....	21	.....	.....
" 11	.....	...	...	..	105	...	.....	.....
" 12	.....	...	...	..	.....	...	.....	.....
" 13	689	82	26	4	270	39	527	.....
" 14	402	62	33	11	576	67	260	.....
" 15	738	63	6	1	637	15	552	2
" 16	176	41	4	5	183	18	.....	136
" 17	37	8	3	3	371	19	.....	.....
" 18	36	...	...	..	.....	...	.....	.....
" 19	.....	...	...	..	.....	...	.....	.....
" 20	608	24	9	10	547	81	452	.....
" 21	291	1	...	5	202	160	604	51
" 22	556	48	1	7	327	13	369	14
" 23	252	72	2	8	565	14	167	1
" 24	28	12	...	2	175	5	.....	.....
" 25	.....	...	...	..	.....	...	.....	.....
" 26	.....	...	...	..	.....	...	.....	.....
" 27	435	74	3	..	255	19	292	.....
" 28	269	72	57	4	372	57	721	159
" 29	320	71	...	4	150	30	480	242
" 30	179	31	...	..	410	...	.....	22
Total.....	8,857	932	247	81	7,658	909	13,943	911
[fol. 1616]								
July 1	54	4	22	4	170	194	.....	13
" 2	.....	...	...	..	198	.....	.....	.....
" 3	.....	...	...	..	.....	.....	.....	.....
" 4	.....	...	...	..	.....	.....	.....	.....
" 5	1,038	16	26	6	415	28	398	.....
" 6	912	32	14	..	222	31	.....	5
" 7	535	78	14	7	157	61	1,433	16
" 8	.....	...	...	..	572	47	220	2
" 9	.....	...	...	..	84	.....	.....	.....
" 10	.....	...	...	..	.....	.....	.....	.....
" 11	1,259	58	8	2	369	55	2,323	13
" 12	471	47	...	7	311	66	1,247	57
" 13	607	5	41	..	209	69	1,679	.....
" 14	469	6	...	4	252	51	1,319	.....
" 15	94	...	...	..	338	.....	1,035	.....
" 16	25	...	...	..	.....	.....	.....	.....

COMPLAINANT EXHIBIT No. 61—Continued

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
July 17	.....	...	...	..	.....	.....	.....	.....
" 18	1,793	22	16	..	776	109	1,607	.....
" 19	708	110	28	4	401	41	2,592	8
" 20	612	51	...	..	327	20	397	.....
" 21	286	87	45	..	109	38	1,789	.....
" 22	32	10	...	5	386	.....	1,402	16
" 23	.....	...	...	..	82	.....	.....	.....
" 24	.....	...	...	..	.....	.....	.....	.....
" 25	553	58	..	1	549	37	.....	12
" 26	671	62	12	..	186	56	160	63
" 27	427	14	6	7	210	76	528	52
" 28	250	21	1	5	92	60	597	33
" 29	100	5	...	7	98	8	294	32
" 30	25	...	...	..	.....	.....	.....	.....
" 31	.....	...	...	..	.....	.....	.....	.....
Total.....	10,927	686	233	59	6,513	1,047	19,020	322

[fol. 1617]

Aug. 1	1,543	14	24	..	501	46	462	45
" 2	305	...	12	..	118	30	771	116
" 3	422	47	...	..	485	10	320	16
" 4	219	17	24	7	145	98	510	.....
" 5	.....	4	...	1	259	1	.....	42
" 6	26	...	...	..	.....	.....	.....	.....
" 7	.....	...	...	..	.....	.....	.....	.....
" 8	993	44	...	6	287	72	1,888	41
" 9	174	46	5	8	772	27	375	34
" 10	462	20	9	2	550	57	1,633	35
" 11	117	43	5	..	72	174	1,666	51
" 12	315	10	...	..	.....	.....	.....	35
" 13	.....	...	...	..	100	.....	.....	.....
" 14	.....	...	...	..	.....	.....	.....	.....
" 15	664	70	56	1	719	40	989	.....
" 16	424	22	16	2	578	132	1,013	43
" 17	874	44	1	1	442	40	541	90
" 18	372	3	20	3	283	49	3,022	71
" 19	29	...	...	..	316	10	260	17
" 20	.....	...	...	..	.....	.....	.....	.....
" 21	.....	...	...	..	.....	.....	.....	.....
" 22	902	19	16	12	342	63	4,509	.....
" 23	166	12	7	26	208	5	518	109
" 24	360	54	21	6	303	109	1,122	60
" 25	283	19	1	2	107	16	3,296	34
" 26	154	5	52	..	235	113	974	.....
" 27	40	9	...	..	.....	.....	.....	.....
" 28	.....	...	...	..	.....	.....	.....	.....
" 29	950	7	74	11	1,367	130	322	51
" 30	414	57	...	6	337	86	1,415	56
" 31	914	257	2	2	290	39	384	114
Total.....	11,122	823	345	96	8,816	1,347	25,990	1,060

COMPLAINANT EXHIBIT No. 61—Continued

[fol. 1618]

1932		Cattle		Calves		Hogs		Sheep	
		Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
Sept.	1	172	15	...	...	195	19	667	.....
"	2	119	3	1	5	420	42	508	.....
"	3	.....	10	...	6	.....	.....	.....	.....
"	4	.....	...	...	...	.....	.....	.....	.....
"	5	.....	...	...	...	.....	.....	.....	.....
"	6	595	44	96	3	325	22	3,440	49
"	7	606	15	14	2	312	19	1,272	41
"	8	351	44	...	3	418	147	119	149
"	9	135	3	6	3	102	49	308	5
"	10	.....	1	...	1	.....	13	.....	75
"	11	.....	...	...	...	.....	.....	.....	.....
"	12	1,231	53	22	3	1,434	54	671	91
"	13	212	23	41	3	293	54	128	75
"	14	472	54	3	18	329	13	1,496	.....
"	15	573	57	31	7	298	50	3,142	44
"	16	209	4	8	5	198	55	3,550	101
"	17	.....	...	...	1	.....	42	.....	.....
"	18	.....	...	...	...	.....	.....	.....	.....
"	19	1,128	10	79	10	388	146	3,032	103
"	20	220	27	...	3	.....	180	1,653	91
"	21	767	82	64	11	469	27	1,851	59
"	22	540	20	...	8	274	29	2,038	94
"	23	85	1	...	...	222	23	1,806	.....
"	24	62	...	...	...	.....	9	.....	.....
"	25	.....	...	...	...	.....	.....	.....	.....
"	26	808	74	21	16	447	162	3,844	76
"	27	223	72	37	2	273	116	2,273	25
"	28	575	10	4	2	286	41	75	63
"	29	257	41	16	...	74	24	222	.....
"	30	53	9	...	20	.....	58	.....	7
Total.....		9,393	672	470	132	6,757	1,394	32,095	1,148

[fol. 1619]

Oct.	1	19	...	...	...	.....	.....	.....	.....
"	2	.....	...	...	...	.....	.....	.....	.....
"	3	1,041	19	17	7	279	23	2,467	105
"	4	446	81	33	4	36	34	1,588	.....
"	5	381	21	3	2	363	89	1,198	11
"	6	128	36	...	...	97	75	1,055	15
"	7	58	4	...	13	154	99	270	45
"	8	.....	...	...	...	.....	.....	.....	.....
"	9	.....	...	...	...	.....	.....	.....	.....
"	10	1,057	14	...	4	267	160	3,718	14
"	11	424	106	30	6	76	35	1,591	.....
"	12	463	30	8	3	416	39	1,488	214
"	13	538	11	12	5	456	131	183	86
"	14	24	...	...	...	441	20	920	73
"	15	.....	...	...	...	.....	.....	.....	.....
"	16	.....	...	...	...	.....	.....	.....	.....
"	17	1,108	91	224	5	613	163	3,373	.....
"	18	333	17	98	6	466	26	3,610	32
"	19	515	34	15	7	624	107	2,795	92
"	20	364	33	312	6	341	6	158	47
"	21	69	4	5	2	149	103	1,098	2
"	22	42	...	...	...	.....	.....	1,265	.....
"	23	.....	...	...	...	.....	.....	.....	.....
"	24	1,700	11	18	3	197	128	2,090	.....

COMPLAINANT EXHIBIT No. 61—Continued

1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truke
Oct. 25	259	11	7	6	104	71	3,087	68
" 26	958	107	3	...	339	56	3,091	5
" 27	422	143	9	3	183	215	942	151
" 28	201	...	8	...	138	64	1,000	66
" 29	.....	...	...	...	.....	.....	.....	.....
" 30	.....	...	...	...	.....	.....	.....	.....
" 31	1,114	78	33	5	121	157	5,020	62
Total.....	11,664	851	835	87	5,860	1,801	42,007	1,088
[fol. 1620]								
Nov. 1	344	27	90	19	369	38	2,047	14
" 2	1,004	20	...	34	121	111	2,387	24
" 3	567	11	3	...	288	104	1,812	.....
" 4	223	15	1	3	250	82	1,350	.....
" 5	.....	...	...	...	.....	7	.....	.....
" 6	.....	...	...	...	.....	.....	.....	.....
" 7	924	85	30	...	524	70	3,347	18
" 8	365	7	6	...	158	55	1,157	.....
" 9	492	84	1	...	10	143	1,311	.....
" 10	531	15	...	3	138	78	1,787	.....
" 11	39	5	...	4	743	5	2,684	.....
" 12	.....	...	...	...	78	41	352	.....
" 13	.....	...	...	...	.....	.....	.....	.....
" 14	1,085	99	18	4	530	67	2,383	33
" 15	223	37	29	11	204	57	2,264	4
" 16	1,193	28	5	2	312	155	1,637	.....
" 17	420	9	3	6	451	95	1,328	20
" 18	80	...	3	...	571	.....	600	58
" 19	44	...	...	...	.....	.....	.....	.....
" 20	.....	...	...	...	.....	.....	.....	.....
" 21	1,078	21	20	...	533	.....	3,678	5
" 22	830	44	46	2	197	61	2,580	.....
" 23	953	1	178	...	140	12	2,255	364
" 24	.....	...	...	...	.....	.....	.....	.....
" 25	296	9	57	...	161	33	1,642	285
" 26	27	1	...	...	.....	.....	100	.....
" 27	.....	...	...	...	.....	.....	.....	.....
" 28	491	23	42	3	149	76	2,212	.....
" 29	494	57	29	3	149	25	2,070	64
" 30	568	17	3	2	193	192	2,152	133
Total.....	12,271	615	563	96	6,269	1,507	43,135	1,022
[fol. 1621]								
Dec. 1	565	12	5	...	136	73	1,454	.....
" 2	180	4	...	...	118	.....	598	120
" 3	137	...	1	...	.....	.....	1,942	102
" 4	.....	...	...	...	.....	.....	.....	.....
" 5	1,086	5	51	...	314	40	2,022	.....
" 6	227	109	27	11	399	129	1,997	58
" 7	824	15	3	1	141	115	2,587	.....
" 8	465	34	7	3	97	13	1,462	383
" 9	199	11	...	...	768	36	2,486	635
" 10	.....	...	...	...	.....	.....	1,892	.....
" 11	.....	...	...	...	.....	.....	.....	.....
" 12	1,786	53	11	...	402	94	3,357	258
" 13	306	...	...	...	66	68	3,818	412
" 14	731	40	2	9	.....	100	1,683	65
" 15	478	1	...	1	71	50	828	33

COMPLAINANT EXHIBIT No. 61—Continued

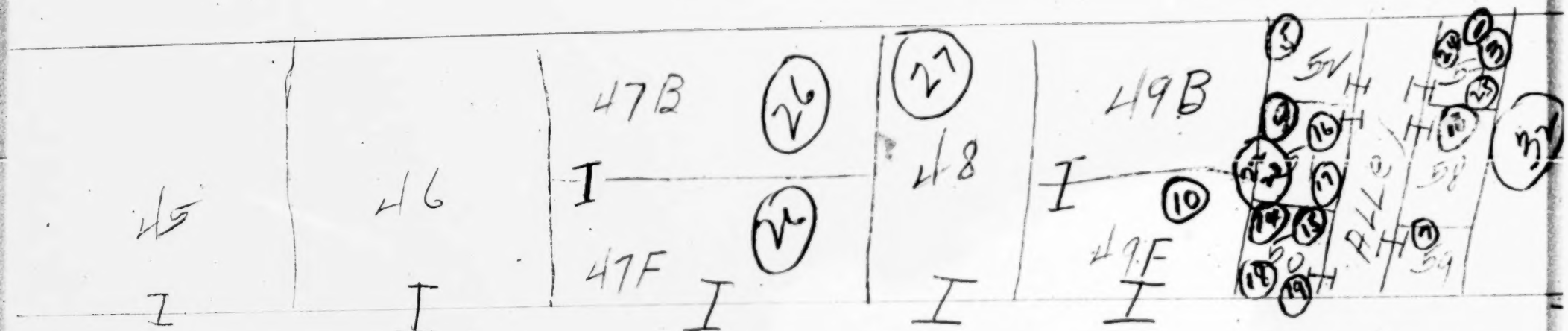
1932	Cattle		Calves		Hogs		Sheep	
	Rail	Truck	Rail	Truck	Rail	Truck	Rail	Truck
Dec. 16	296	6	...	...	248	.....	254	.....
" 17	.....	...	...	...	.....	.....	460	.....
" 18	.....	...	...	...	.....	.....	.....	.....
" 19	474	56	1	3	447	87	2,891	271
" 20	219	25	9	17	122	36	3,734	259
" 21	348	61	7	...	337	43	1,923	23
" 22	191	26	42	...	431	29	2,014	121
" 23	55	3	...	4	214	.....	538	392
" 24	.....	...	...	....	147	.....	1,703	.....
" 25	.....	...	...	...	.....	.....	.....	.....
" 26	672	...	6	1	616	25	2,752	50
" 27	221	6	...	1	438	203	1,753	869
" 28	534	29	...	...	288	89	2,592	28
" 29	158	14	9	4	.....	.....	957	2
" 30	103	1	2	6	197	30	696	....
" 31	.....	...	...	...	.....	.....	1,193	.....
Totals	10,255	511	183	61	5,997	1,260	49,586	4,081

(Here follows 1 photo, folio 1622.)

NORTH

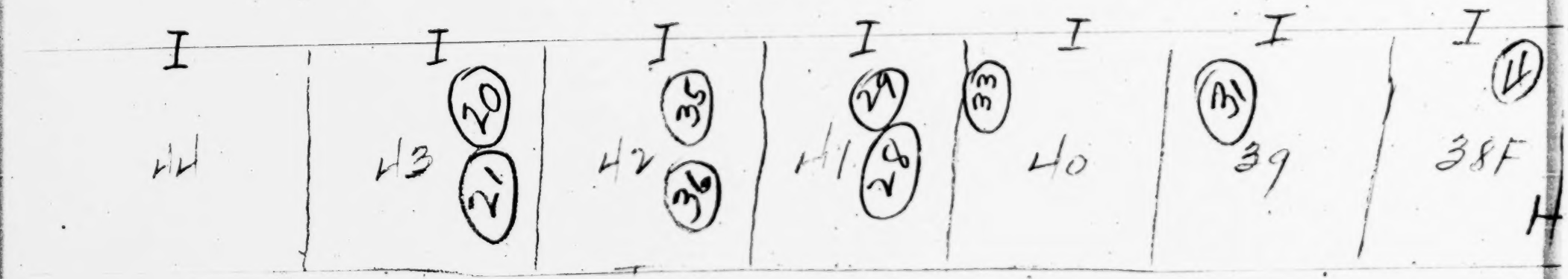
Respondent Exhibit No. 7

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West

CATTLE ALLEY



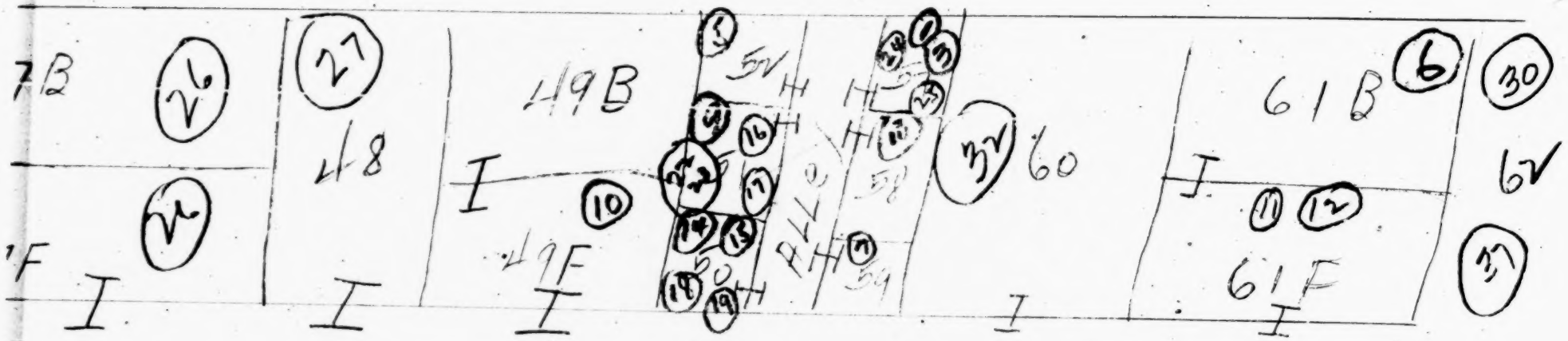
EXCHANGE AVE (SOUTH)

NORTH

13-C

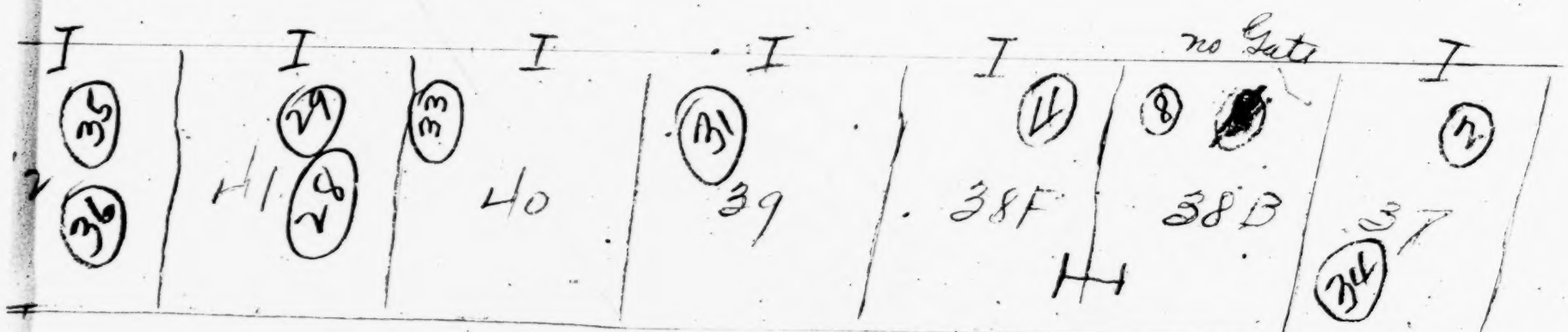
Respondent Exhibit No. 7

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CATTLE ALLEY

EAST



[fols. 1623 & 1624] IN UNITED STATES DISTRICT COURT

[Title omitted]

Findings of Fact and Conclusions of Law—Dec. 31, 1934

FINDINGS OF FACT

The Court makes findings of fact as follows:

1. The orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, prescribing rates, charges and practices for plaintiffs as market agencies at the Union Stock Yards, Chicago, Illinois, were made after full hearings accorded the plaintiffs, and each of them, and upon findings of fact made by the Secretary based upon the evidence taken at the hearings;

2. The findings of fact made by the Secretary of Agriculture, upon which the orders aforesaid of the Secretary are based, are supported by substantial evidence;

3. Upon an independent consideration of the evidence received by the Secretary of Agriculture, the Court adopts, as its findings of fact, the findings of fact made by the Secretary and by this reference incorporates them therein; and,

4. Upon an independent consideration of the evidence received by the Secretary of Agriculture and that received by this Court, the Court adopts, as its findings of fact, the findings of fact made by the Secretary and by this reference incorporates them herein.

[fols. 1625 & 1626] CONCLUSIONS OF LAW

The Court concludes as matters of law as follows:

1. The orders of the Secretary of Agriculture, dated January 8, 1934, and March 12, 1934, prescribing rates, charges and practices for plaintiffs as market agencies at the Union Stock Yards, Chicago, Illinois, were made by the Secretary after a full hearing in all respects conforming to the requirements of the Packers and Stockyards Act, 1921;

2. The orders aforesaid are fully supported by the findings of fact made by the Secretary and those findings are

based on substantial evidence and are supported by the weight of the evidence and are not based upon any erroneous rules of law; and,

3. The rates, charges and practices prescribed by the Secretary in the orders aforesaid are reasonable and not arbitrary, and do not take the property of plaintiffs, or any of them, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

Dated at Chicago, Illinois, this 31 day of December, 1934.
(Signed) Samuel Alschuler, United States Circuit Judge. —— ——, United States District Judge.
(Signed) John P. Barnes, United States District Judge.

[fol. 1627] In United States District Court for the Northern District of Illinois, Eastern Division

In Equity. No. 13,829

C. H. Acker, Doing Business as C. H. Acker & Company, et al.,

vs.

United States of America, et al.

Before Alschuler, Circuit Judge, and Wilkerson and Barnes, District Judges

Opinion—Feb. 1, 1935

Barnes, District Judge:

This is a suit by one-hundred fifty-seven persons, partnerships and corporations who are registered and doing business under the Packers and Stockyards Act, 1921 (U. S. C. A. Title 7, Chap. 9) as market agencies engaged in the buying and selling in commerce of live stock on a commission basis at the Union Stock Yards, Chicago, Illinois, against the United States, Henry A. Wallace, Secretary of Agriculture, Homer S. Cummings, Attorney General, and Dwight H. Green, United States District Attorney for the Northern District of Illinois, to restrain the execution and

enforcement of an order of the Secretary of Agriculture of January 8, 1934, and a supplemental order of the Secretary dated March 12, 1934.

Since 1865, there has existed in Chicago stockyards, commonly known as Chicago Union Stock Yards, to which producers and shippers of live stock send cattle, hogs, sheep, goats, mules and horses for sale. It is the primary market for the chief live stock producing sections of the United [fol. 1628] States. It is regarded by the live stock industry as the basic market for live stock in the United States, if not for the world. The prices prevailing at this market establish and affect the price of live stock throughout the United States and the world. Shippers to this market reside in and ship from 45 states of the Union.

After the enactment of the Packers and Stockyards Act, 1921, the Chicago Live Stock Exchange (a trade association whose members comprise commission merchants and other market agencies), and all market agencies, members thereof, including some or all of the plaintiffs, agreed with the then Secretary of Agriculture that, in lieu of the formal procedure and hearing provided for by said Act, the entire subject matter and charges in a certain complaint by American National Live Stock Association and others against the Chicago Live Stock Exchange and others might be investigated by two arbitrators, with full authority in said arbitrators finally to adjust and determine the issues raised in said complaint. It was further agreed that the rates and charges and practices found to be just and reasonable by said arbitrators and recommended by them would be adopted by the Chicago Live Stock Exchange and the members thereof upon approval by the Secretary of Agriculture. Pursuant to said arbitration agreement, and after hearing, a schedule of rates and charges and practices was prescribed by said arbitrators, approved by the then Secretary of Agriculture, and adopted by the Chicago Live Stock Exchange and the members thereof. Said schedule of rates, charges and practices, without substantial alteration, has been in effect since September 15, 1923, and the plaintiffs and others similarly situated have, since that date, adopted and followed and used the said schedule.

[fol. 1629] On September 23, 1932, the then Secretary of Agriculture entered an order of inquiry and notice of hearing against the plaintiffs and others wherein it was directed

that an inquiry be made for the purpose of determining the lawfulness of any and all rates and charges of the plaintiffs and of any rule, regulation or practice affecting the same, or the rendering of any stockyard service without making any charge therefor. A hearing was subsequently held beginning on May 15, 1933, before an examiner acting under and by the authority of the Secretary. Said hearing was finally adjourned on November 7, 1933. Oral argument was had on December 13, 1933, before the Secretary.

On January 8, 1934, the Secretary executed and issued his order which is by this action sought to be enjoined. By said order, a schedule of rates, charges and classifications was prescribed and it was ordered that they should become effective 30 days thereafter.

On February 7, 1934, the plaintiffs filed a petition for rehearing, which was denied on March 12, 1934. By the same order denying the petition for rehearing, the schedule of rates, charges and classifications of the order of January 8, 1934, was slightly modified. The extent to which the prescribed rates will reduce prior rates is in dispute. Plaintiffs contend that the prescribed rates, when applied to the four-months period ending April 30, 1934, will effect an average reduction in gross commissions of 20.68%. By orders entered from time to time, the Secretary postponed the effective date of the order of January 8, 1934, and the supplemental order issued March 12, 1934. The effective date lastly fixed was April 20, 1934.

On April 9, 1934, the plaintiffs and others filed an amended petition for rehearing, which was denied by the Secretary on April 12, 1934.

[fol. 1630] On April 18, 1934, the plaintiffs filed their bill of complaint in this cause, wherein they charged that the rates prescribed by the Secretary in his orders of January 8, 1934, and March 12, 1934, are unreasonable and arbitrary and are contrary to the evidence and without evidence upon which they may be based, that they were unreasonably and arbitrarily arrived at by guess and supposition rather than by any well known and well recognized statistical method, such as the modal method the bulk-line method, the weighted average method, or percentage deviations therefrom. The bill further charges the confiscation of property and the deprivation of business and property without due process of law.

On April 19, 1934, this court granted a preliminary injunction, restraining the enforcement of the prescribed rates. The injunction was conditioned upon plaintiffs depositing with the clerk of this court the full amount by which the charges collected under the schedule of rates in effect exceeds the amount which would have been collected for an equal period of time under the rates prescribed by orders of the Secretary of Agriculture. Subsequently, the case came on for final hearing before the court. At that time, the plaintiffs sought leave to introduce additional evidence on the subject of alleged confiscation. The right to introduce further evidence was contested by the defendants. The court permitted the testimony to be received subject to the objection in order that it might be before this court and the reviewing court, if deemed proper.

The Secretary caused to be made an investigation of the books and records of each of the market agencies doing business at the Chicago Union Stockyards. This investigation included an audit of the financial status of all firms for the years 1931 and 1932, an analysis of all income and expense, [fol. 1631] and an appraisal of all fixed assets owned by each firm. After an examination and analysis of the audits, the Secretary found reasonable per head costs and reasonable per head profits for selling each species of livestock and prescribed rates which include a substantial margin above such reasonable costs and profits.

Complaint is made that the Secretary did not use some other statistical method in determining the rates to be prescribed, such as the median method, involving the selecting the unit cost of the firm above which there are as many firms with higher costs as there are below with lower costs, the bulk-line method, involving eliminating a certain percentage of firms from consideration, the market average method, or percentage deviations from said methods. No particular method is prescribed by constitution or statute. The use of any one of these methods would have involved the exercise of judgment by the rate maker on one occasion, and sometimes more—always when he chose the method and sometimes when he used it. The judgment factor cannot be excluded. The statute does not contemplate it shall be. A reasonable rate schedule is the result of the application of judgment by the rate maker to the pertinent facts. The Secretary chose to apply his judgment to the pertinent facts

according to the method shown by the evidence and above recited. That method was open to him under the statute.

It is said that the Secretary has usurped the powers of a manager in that he has fixed salesman's salaries and in that he has limited the amounts which may be spent for business getting and maintaining expenses. It is true, of course, that, subject to reasonable regulation in the public interest, the management and right to control the policy of a business affected with a public interest belong to its owners (Banton v. Belt Line Ry., 268 U. S. 413, 421), but that does [fol. 1632] not mean that the governmental agency charged with the fixing of reasonable rates may not consider and determine what are reasonable wages or salaries or other compensation for human effort to be covered into rates. If this power does not exist, the power to prescribe reasonable rates does not exist, and Congress has vested the latter power in the Secretary (Tagg Bros. & Moorhead v. United States, 280 U. S. 420, 438). In the case at bar, the Secretary has not by his orders sought directly to affect the management or business policy of the plaintiffs. They are free to pay for salesmen's salaries and for business getting and maintaining expenses such amount as to them seem wise. The Secretary has merely determined a reasonable per head salesmanship cost and business getting and maintaining expense to be covered into rates to be charged the rate payer. That was within the power vested in him to prescribe reasonable rates.

The plaintiffs had the value of owners' services appraised by a committee of five and offered the appraisals before the Secretary. The Secretary, however, did not accept the appraisals as binding on him, but took the amounts that the owners had set up as salaries or drawing accounts for themselves, or where no amounts had been set up, he classified net profits as compensation to the owners in lieu of salary. We think the Secretary was justified in this course. The amounts which he used in determining costs were the amounts which the owners actually received. The appraisal figures were what the committee thought the owners might receive if they bargained with others for their services. Furthermore, the Secretary, in fixing the rates, allowed something to cover management and something to cover uninsurable risks and called the two profit. He also allowed something for interest on investment. But, in addition to

the foregoing items, the Secretary allowed a substantial [fol. 1633] spread between the total of the reasonable costs and profits and the rates as prescribed. This difference, based on the business of 1932, approximates $500,000 for the market as a whole, or nearly 25% more than the total costs and profits found by the Secretary to be reasonable. It is unquestionably true that even under the old rates some of the commission men at Chicago experienced difficulty in earning a livelihood; but such a result will come about more or less under any rate, in any industry or occupation. There are always those whose entry into or continuance in a business cannot be justified save for the hope and expectation that their business will increase and they will become more prosperous. Of course the rate structure cannot be predicated alone upon the experience of those whose volume of business is very small. No more should it be predicated entirely upon the experience of those who are in the enjoyment of a very large business. All must be considered, and as nearly as possible a fair conclusion must be reached. It is possible that quite a number of the smallest dealers may not long survive the new rates; but probably numbers of them would not have survived under the old rate. When one enters such an occupation in the hope of eventually working up a successful business the volume of his transactions will for a time necessarily be small, and if success comes to him it will be because he has been able to hold on until the business reaches a volume that will afford him a livelihood. But proper rate regulation in a large industry charged with a public interest cannot, of course, be stayed because a few there are who would suffer from its application. We cannot say that the Secretary did not make an adequate allowance for the owner's function.

Complaint is made that the Secretary classified livestock into grades, depending upon weight, and prescribed his rates on a consignment basis rather than on a draft basis. [fol. 1634] A "draft" is all those animals in one consignment weighed as a single sales or purchase classification. A "consignment", on the other hand, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day. It appears from the record that, at the oral argument before the Secretary, the plaintiffs submitted a tariff prepared by them for adoption by the Secretary.

This proposed tariff was based upon the draft as the unit, with gradations in charges according to the number of head and the weight of the livestock in each draft. Both the tariff proposed by the plaintiffs and the one prescribed by the Secretary include the weight factor, of which plaintiffs now complain. The issue between a per head rate, based on the number of head in a consignment, and a per head rate, based upon the number of head in a draft, and the issue of few or many weight classifications, were clearly presented to the Secretary, and his conclusion was reached after a consideration of the relevant factors. This appears from the following language in the Secretary's order of January 8, 1934:

"There are features of their (plaintiffs') proposed tariff which would tend to overcome some of the obsolete aspects of the existing tariff. The extensive weight classifications would tend to complexity in application. Fewer weight classifications can be made, which will render a tariff simple in its application and at the same time preserve substantial equity among the different weight groups. From all the evidence, it is reasonable to conclude that the consignment, as hereinafter defined, more nearly represents the work-occasioning unit than does the weight draft. Additional weight drafts in a consignment occasion some additional work, and the tariff structure hereinafter prescribed makes provision to compensate for that extra work."

We have considered above in some detail those phases of the Secretary's action which are said to result in the rates [fol. 1635] and charges specified in the orders of the Secretary being unreasonable and arbitrary and contrary to the evidence and without evidence on which they may be based, and, upon such consideration, we arrive at the conclusion that these contentions of the plaintiffs are without foundation.

The plaintiffs contend that the denial by the Secretary of the two petitions for rehearing was arbitrary because such action precluded the plaintiffs from showing that the prescribed rates would be confiscatory. We cannot see why, in a rate case, the entity, whose rates are under investigation, should wait until after rates are prescribed before showing or attempting to show that the rates prescribed are confiscatory. The idea underlying such procedure is contrary to

the fundamental rule that causes of action or defenses should not be split up. We cannot agree that the action of the Secretary was arbitrary.

At the trial before this Court, the plaintiffs, in support of their contention that the maximum rates prescribed by the Secretary are confiscatory, offered evidence which, generally speaking, tends to show that past actual costs can not be maintained under the prescribed rates. The defendants objected to this evidence and it was received subject to the objection. This evidence, which was offered and received, does not estabish confiscation, since there is no showing, either in the record made before the Secretary or before this Court, as to the individual firms, that the volume of business received warrants taxing the rate payers for the overhead incurred. Hegeman Farms Corporation v. Baldwin (decided Nov. 5, 1934) 293 U. S. 163; Aetna Ins. Co. v. Hyde, 275 U. S. 440; Beaumont, S. L. & W. Ry. v. U. S., 282 U. S. 88. The plaintiffs have not sustained the burden of proof on the question of confiscation. Furthermore, the same may properly be said of the evidence offered in this [fols. 1636 & 1637] case as was said of evidence relating to property valuation and depreciation reserve in Union Stock Yards Company of Omaha v. United States, — Fed. Supp. —:

"The testimony offered for the plaintiff tends to defeat its probative force by going too far and proving too much. Plaintiff's testimony is to the effect that its properties are worth some $15,000,000 and its net operating income derived from the rates it had fixed for itself was some $850,000, so that on the showing it would appear to have been voluntarily operating at a rate far below what it asserts to be a confiscatory rate. Likewise, it contends that it must have a reserve for depreciation, maintenance and repairs far in excess of any reserve which it has ever set up on its own account. We think the testimony, by proving too much, over-shoots the mark and must fail of the intended effect."

Having considered the new evidence offered for the first time in this court, and all the evidence offered before the Secretary, and having concluded, as we have, that there is no showing of confiscation, we find it unnecessary to determine whether the evidence offered for the first time in this court was admissible. Tagg Bros. & Moorhead v. U. S., 280 U. S. 420.

We are, contemporaneously with the filing of this memorandum, filing findings of fact and conclusions of law.

Counsel may, on notice, present a draft of a decree dismissing the bill of complaint for want of equity, and directing, accordingly, disposition of the impounded funds.

Samuel Alschuler, United States Circuit Judge.
——, United States District Judge. John P. Barnes, United States District Judge.

[fols. 1638 & 1639] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 13,829

C. H. ACKER, Doing Business as C. H. Acker & Company, et al.,

vs.

UNITED STATES OF AMERICA et al.

SEPARATE OPINION—Feb. 1, 1935

I do not concur in the findings of this Court which adopt in toto the findings of fact made by the Secretary of Agriculture. Some of them, particularly those relating to salesmanship, costs and allowances for business getting and maintaining expenses are, in my opinion, against the weight of evidence. However, I am not prepared to say that the findings were made without any evidence to support them. I join, therefore, in the entry of the decree dismissing the bill.

(Signed) James H. Wilkerson, United States District Judge.

January 30, 1935.

[fol. 1640] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 13,829

C. H. ACKER, Doing Business as C. H. Acker & Company et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA ET AL., Defendants

DECREE—March 19, 1935

This cause came on for final hearing on the petition and complaint herein, praying for a decree enjoining and restraining the respondents from enforcing an order of the Secretary of Agriculture, dated January 8, 1934, and a Supplemental Order of the Secretary of Agriculture, dated March 12, 1934, in Bureau of Animal Industry Docket No. 402 of the Respondent, Henry A. Wallace, Secretary of Agriculture, known as "Secretary of Agriculture vs. C. H. Acker, doing business as C. H. Acker & Company et al.", which order prescribed the maximum rates and charges for stockyards services rendered the petitioners and other market agencies doing business at the Union Stockyards, Chicago, Illinois. The record made at the hearings before the Secretary was received in evidence by this Court, and some additional evidence was presented by petitioners, oral arguments were made, briefs were filed and the case was fully submitted to this Court by counsel for both parties.

In accordance with the views heretofore expressed in the opinion, findings of fact and conclusions of law of this Court, it is hereby

[fols. 1641 & 1642] Ordered, adjudged and decreed that the petition and complaint hereinbefore filed by the petitioners be, and the same is, hereby dismissed at petitioners' costs.

It is further ordered that the interlocutory injunction heretofore granted, including the provisions for depositing with the Clerk of this Court the amounts by which the rates and charges collected by petitioners exceed the rates and charges prescribed in the orders of the Secretary of Agriculture, be and the same is hereby continued in effect for thirty days from the date of this order.

It is further ordered that if petitioners do not take an appeal within thirty days from the date of this order, said interlocutory injunction shall be vacated at the expiration of said thirty-day period without further order of this Court. In the event that no appeal is taken and the interlocutory injunction is vacated at the expiration of thirty days as above provided, the amounts impounded shall be refunded to the shippers of livestock in such manner as shall be specified by subsequent order of this court.

It is further ordered that if an appeal shall be taken to the United States Supreme Court within thirty days from the date of this order, the interlocutory injunction heretofore granted, including the provisions for depositing with the Clerk of this Court the amounts by which the rates and charges collected by petitioners exceed the rates and charges prescribed in the orders of the Secretary of Agriculture, shall continue in effect during the pendency of said appeal and until final disposition of the matter by the Supreme Court.

Exceptions are allowed petitioners to the findings, conclusions and decree of this Court.

Dated this 19th day of March, 1935.

Samuel Alschuler, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fol. 1643] In United States District Court

[Title omitted]

Petition for Appeal—Filed April 18, 1935

The plaintiffs and petitioners herein, feeling themselves aggrieved by the Final Order or Decree of the District Court entered March 19, 1935, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the Final Decree or Order erroneous are set forth in Assignment of Errors filed herewith, to which reference is made.

They pray that a transcript of the record, proceedings and papers on which the Final Order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

They pray, that in accordance with the said Final Order or Decree, the interlocutory injunction heretofore granted herein, on, to-wit, April 19, 1934, including the provisions for depositing with the Clerk of this Court amounts by which the rates and charges collected by the plaintiffs and petitioners exceed the rates and charges prescribed in the [fols. 1644 & 1645] Orders of the Secretary of Agriculture, dated January 8, 1934, and March 12, 1934, shall continue in effect during the pendency of the said appeal and until final disposition of the matter by the Supreme Court of the United States, or until the further order of this Court.

They further pray that a proper order touching the security for costs required of them be made.

Geo. I. Haight, John S. Boyd, M. K. Hobbs, Attorneys for Plaintiffs and Petitioners.

Dated April 17,. 1935.

[fol. 1646] In United States District Court

[Title omitted]

Order Allowing Appeal and Providing for Supersedeas—April 18, 1935

On motion of the plaintiffs and petitioners, by their attorneys, the Court being advised in the premises.

It is hereby ordered that an appeal to the Supreme Court of the United States from the Final Order or Decree heretofore filed and entered herein be, and the same is hereby, allowed pursuant to the statutes and rules of court in such case made and provided; and that a certified transcript of the record, proceedings and papers on which said Final Order or Decree was made and entered be transmitted to the Supreme Court of the United States.

It is further ordered that the bond for costs on appeal be fixed at the sum of Five Hundred Dollars ($500.00): that said bond properly conditioned be filed and approved within ten (10) days from the date of this Order.

Pursuant to the provisions of said Final Order or Decree herein, it is further ordered that this appeal having been taken to the Supreme Court within thirty (30) days from the date of entry of said Final Decree or Order, the inter-

[fols. 1647 & 1648] locutory injunction heretofore granted herein on April 19, 1934, including the provisions for depositing with the Clerk of this Court the amounts by which the rates and charges collected by the plaintiffs and petitioners exceed the rates and charges prescribed in the Orders of the Secretary of Agriculture, shall continue in effect during the pendency of this Appeal and until final disposition thereof by the Supreme Court, or until the further order of this Court.

Samuel Alschuler, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

Dated this 18th day of April, 1935, at Chicago.

[fol. 1649] In United States District Court

[Title omitted]

Assignments of Error—Filed April 18, 1935

1. The Court erred in dismissing the Petition and Complaint.

2. The Court erred in adopting as its Findings of Fact, the Findings of Fact made by the Secretary of Agriculture.

3. The Court erred in finding that the Findings of Fact made by the Secretary of Agriculture are supported by substantial evidence.

4. The Court erred in adopting the Findings of Fact made by the Secretary upon the Court's independent consideration of the evidence received by the Secretary of Agriculture and that received by the Court.

5. The Court erred in finding that the Orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, are supported by Findings of Fact based on substantial evidence.

[fol. 1650] 6. The Court erred in finding that the Orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, are based on Findings of Fact supported by the weight of the evidence.

7. The Court erred in concluding as a matter of law that the Orders of the Secretary of Agriculture dated January 8, 1934, and March 12, 1934, were made by the Secretary after a full hearing in all respects conforming to the requirements of the Packers and Stockyards Act, 1921.

8. The Court erred in concluding as a matter of law that the Orders aforesaid are fully supported by the Findings of Fact made by the Secretary and that those findings are based on substantial evidence and are supported by the weight of the evidence and are not based upon any erroneous rules of law.

9. The Court erred in concluding as a matter of law that the rates, charges and practices prescribed by the Secretary in the Orders aforesaid are reasonable and not arbitrary and do not take the property of plaintiffs or any of them without due process of law in violation of the Fifth amendment to the Constitution of the United States.

10. The Court erred in finding that the rates, charges and practices prescribed by the Secretary in the Orders aforesaid are reasonable and not arbitrary.

11. The Court erred in finding that the rates, charges and practices prescribed by the Secretary in the Orders aforesaid do not take the property of the plaintiffs, or any of them, without due process of law.

[fol. 1651] 12. The Court erred in not finding that the Orders of the Secretary of Agriculture aforesaid are based upon erroneous rules of law.

13. The Court erred in not finding that the denial by the Secretary of Agriculture, of petitions for rehearing was arbitrary and unreasonable because such action precluded the plaintiffs and petitioners from showing that the prescribed rates would be confiscatory.

14. The Court erred in not finding that costs allowed for salesmen's salaries are inadequate, unreasonable and without relation to actual experience at the market.

15. The Court erred in not finding that costs deemed reasonable by the Secretary are inadequate, unreasonable and without relation to actual experience.

16. The Court erred in not finding that the costs found by the Secretary are without foundation in the record.

17. The Court erred in finding that reimbursement to cover management and to cover uninsurable risks is profit.

18. The Court erred in not finding that the classification by the Secretary of live stock into grades, depending upon weight, and the prescribing of rates on a consignment, rather than on a draft basis, was arbitrary, unreasonable and without regard or relationship to cost.

19. The Court erred in attributing to the Secretary of Agriculture the power to constitute himself the financial manager of a business and to substitute his judgment for that of the management of the business.

[fol. 1652] 20. The Court erred in not finding that the Secretary of Agriculture was arbitrary and unreasonable in not using any well recognized statistical method in the determination of costs.

21. The Court erred in not finding that the Secretary did not make an adequate allowance for the functions of the owners.

22. The Court erred in not finding that the rates prescribed by said Orders are confiscatory to the plaintiffs and to each of them.

23. The Court erred in finding that the plaintiffs did not sustain the burden of proof to show that the prescribed rates are confiscatory to them and to each of them.

24. The Court erred in not finding that the Secretary's allowance for business-getting and maintaining costs was unlawful, unreasonable and was not supported by the evidence.

25. The Court erred in not finding that there is no evidence in the record of unnecessary, wasteful or extravagant expenditures.

26. The Court erred in not finding that there was no waste or extravagance in any salaries paid by plaintiffs to salesmen.

27. The Court erred in not finding that in the absence of waste or improper expenditures in operating the business

of any respondent, the actual cost as shown by the record should have been accepted as reasonable and proper.

[fol. 1653] 28. The Court erred in not finding that the performance prescribed by the Secretary per salesman was based upon no evidence.

29. The Court erred in not finding that the performance prescribed by the Secretary per salesman was unreasonable and arbitrary.

30. The Court erred in not finding that a compliance with the Secretary's Order with reference to performance would throw out of employment necessary salesmen and that all of the evidence showed that they were necessary to perform the business.

31. The Court erred in not finding that each of the plaintiffs and petitioners has operated its business at a loss since the effective date of the Orders of the Secretary.

32. The Court erred in not finding that the so-called item of profit provided for by the Secretary in his costs, includes items of recurrent risk and that the allowance made is otherwise inadequate to cover the hazards of the entrepreneur.

33. The Court erred in not finding that the Nine Per Cent (9%) allowed by the Secretary for business-getting and maintaining, was by fiat and was not based upon any fact in the record, and was arbitrary and unreasonable.

34. The Court erred in finding that the Orders of the Secretary of Agriculture are supported by the authority of Tagg Bros. & Moorehead vs. United States, 280 U. S. 420.

35. The Court erred in not finding that the rates prescribed by the Secretary will not return a reasonable profit to any plaintiff and petitioner.

[fols. 1654-1657] 36. The Court erred in not finding that the Secretary went outside of the record to make his Findings of Fact.

37. The Court erred in ordering that the interlocutory injunction of April 19, 1934 should be vacated.

38. The Court erred in not ordering a permanent injunction suspending and enjoining the Orders of the Secretary of Agriculture.

39. The Court erred in finding that the rates prescribed by the Secretary include a substantial margin above reasonable costs plus profits.

40. The Court erred in finding that the Secretary had power to determine wages and salaries.

41. The Court erred in finding that the Secretary was justified in refusing to accept appraised salaries of owners.

Geo. I. Haight, John S. Boyd, M. K. Hobbs, Attorneys for Plaintiffs and Petitioners.

[fols. 1658-1660] Bond on appeal for $500.00, approved and filed April 23, 1935, omitted in printing.

[fols. 1661 & 1662] In United States District Court

[Title omitted]

Order Substituting Party Defendant—July 13, 1935

Upon motion of the petitioners and plaintiffs, the Court being advised in the premises be it and it is hereby ordered that Michael Igoe, United States District Attorney, Northern District of Illinois, Eastern Division, be substituted as a party defendant in lieu of Dwight H. Green, formerly United States District Attorney, Northern District of Illinois, Eastern Division.

Samuel Alschuler. John P. Barnes.

Dated Chicago, Illinois, July 13, 1935.

[fols. 1663-1678] Orders extending time for docketing case to and including Dec. 24, 1935, omitted in printing.

[fols. 1679 & 1680] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO APPLICATION OF RATES, ETC.—Filed Dec. 17, 1935

For the purposes of limiting the size of the record on appeal and the cost of printing and transmitting the same, it is hereby stipulated and agreed by and between the parties hereto, by their respective counsel of record, that the application of the rates prescribed by the Secretary of Agriculture in his Order of March 12, 1934 to the composite and aggregate business of the respondent market agencies for the year 1932 would have produced a $493,941 margin over the reasonable costs plus reasonable profits found by the Secretary.

For the same purposes the appellants (that is the respondent market agencies) agree not to contend that the rates prescribed by the Secretary of Agriculture would not produce revenue sufficient to meet reasonable costs plus reasonable profits as found by the Secretary, either in respect to individual agencies or all of the agencies in the aggregate when applied to the 1932 business.

Wendell Berge, G. N. Dagger, Attorneys for Appellees. Geo. I. Haight, John S. Boyd, M. K. Hobbs, Attorneys for Appellant.

Dated Chicago, June 22, 1935.

[fols. 1681 & 1682] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RE PHYSICAL EXHIBITS—Dec. 17, 1935

It appearing to the Court that certain of the exhibits of the Government, sometimes called Complainants' Exhibits, certain exhibits of the respondents before the Secretary of Agriculture, and certain of the exhibits of the petitioners before the Court, all of said exhibits being particularly identified in the præcipe for record on appeal, to be transmitted to the United States Supreme Court as physical ex-

hibits, are inappropriate for insertion in the printed record and have not been attached to the proposed record on appeal and that said exhibits should be inspected by the United States Supreme Court in their original form; it is hereby ordered that said exhibits be transmitted by the Clerk of this Court to the United States Supreme Court in their original form in connection with the statement of evidence and the transcript of record on appeal.

Samuel Alschuler. James H. Wilkerson. John P. Barnes.

[fol. 1683] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATED PRÆCIPE FOR TRANSCRIPT OF RECORD ON APPEAL —Filed Dec. 17, 1935

It is hereby stipulated by and between counsel for the respective parties hereto that the transcript of record on appeal in the above entitled cause shall consist of the following items:

The Clerk of the above identified court will please prepare a transcript of record to be transmitted to the Supreme Court of the United States in pursuance of the appeal heretofore taken, and include therein the following:

1. Petition and complaint filed April 18, 1934 including therein the exhibits thereto attached, namely,

Exhibit A—Arbitration agreement;
Exhibit B—Arbitration award, 1923;
Exhibit B-1—Present tariff;
Exhibit C—Proceedings, findings of fact, conclusion and order of Secretary of Agriculture dated Jan. 8, 1934 Bureau of Animal Industry Docket No. 402;
Exhibit D—Supplemental order of Secretary dated March 12, 1934.

2. Order of Judge Barnes dated April 18, 1934 convening Statutory Court.

[fol. 1684] 3. Interlocutory injunction dated April 19, 1934.

4. Answer of the defendants.

5. Order of June 12, 1934 for amendment to petition and complaint.

6. Answer to amendment to petition and complaint filed June 25, 1934.

7. Narrative statement of evidence taken before Statutory Court certified by the Court.

8. Narrative statement of evidence before the Secretary of Agriculture certified by the Court.

9. Order of court approving narrative statement of evidence.

10. Findings of fact dated December 31, 1934, signed by Judges Alschuler and Barnes.

11. Opinion of Judges Alschuler and Barnes filed February 1, 1935.

12. Opinion of Judge Wilkerson filed February 1, 1935.

13. Decree of Court entered March 19, 1935.

14. Petition for appeal filed April 18, 1935.

15. Order allowing appeal and supersedeas dated April 18, 1935.

16. Assignment of Errors filed April 18, 1935.

17. Citation on appeal dated April 18, 1935.

18. Statement of appellants pursuant to Rule 12 of the Supreme Court respecting jurisdiction on appeal.

19. Acknowledgment of service upon defendants of citation on appeal and other papers relating to the appeal.

20. Cost bond upon appeal.

21. Order re substitution of party defendant dated July 13, 1935.

22. All orders extending time to file record and docket appeal in Supreme Court.

23. Stipulation of parties dated June 22, 1935.

24. Order of court concerning physical exhibits.

25. This præcipe.

26. The following petitioners' exhibits:

a. Exhibit No. 1—Volume of livestock handled by petitioners, etc.

b. Exhibit No. 2—Statement of commissions, costs and profit or loss, etc.

c. Exhibit No. 3—Statement showing the application of Secretary's reasonable cost per head, etc.

[fol. 1685] d. Exhibit No. 4—Cost per head compared with commissions per head, etc.

e. Exhibit No. 5—Cost per head compared with the Secretary's reasonable cost per head, etc.

f. Exhibit No. 6—Percent of profit or loss under present rates compared with profit or loss under Secretary's rates, etc.

g. Exhibit No. 7—Owners' salary plus profit or less loss under present rates compared with owners' salaries plus profit or less loss under Secretary's rates, etc.

h. Exhibit No. 8—Relative cost per head of selling consignments of various sizes, etc.

i. Exhibit No. 9—The cattle salesman employed under present commission rates, etc.

j. Exhibit No. 10—Statement showing that small volumes firms have very little effect on market costs, etc.

k. Exhibit No. 11—Secretary's reasonable cost per car lot compared with the market median, weight average and bulk line, etc.

l. Exhibit No. 13—The following items of the record and transcript of evidence and exhibits in Secretary of Agriculture vs. C. H. Acker, etc. Bureau of Animal Industry Docket No. 402; other items of said record and transcript of evidence and exhibits appearing elsewhere in this præcipe:

A. Government Exhibit No. 45—letter of March 30, 1933, signed by Walters & Dunbar;

B. Government Exhibit 61, receipts by date of John Clay & Company;

C. Respondents' Exhibit No. 7, sketch of certain pens.

[fol. 1686] The Clerk will also certify to the Supreme Court, the following exhibits as physical exhibits:

a. Petitioners' Exhibit No. 12—Publication by Secretary of Agriculture entitled "Emergency Hog Market Program"

b. The following items of Petitioners' Exhibit No. 13, the record and transcript of evidence and exhibits in Secretary of Agriculture vs. C. H. Acker, etc. Bureau of Animal Industry, Docket No. 402:

A. Order of inquiry and notice of hearing dated September 23, 1932;

B. Transcript of evidence;

C. Proceedings, findings of fact, conclusion and Order of Jan. 8, 1934;

D. Petition for rehearing filed Feb. 7, 1934;

E. Supplemental order of Secretary issued March 12, 1934;

F. Amended petition for rehearing filed April 9, 1934;

G. Order denying petition for rehearing dated April 12, 1934;

H. The following government exhibits sometimes marked and referred to as complainants' exhibits:

Exhibit No. 6—A map of the stockyards;
Exhibit No. 7—A map of the stockyards;
Exhibit No. 14—Rules of Chicago Live Stock Exchange;
Exhibits Nos. 15—1 to 15—173—Blue audits of 1932;
Exhibit No. 36—Daily purchase record of C. E. Kleeman Co.
Exhibit No. 49—Bachman Cost study, 1932;
Exhibit No. 50—Salary questionnaires;
Exhibit No. 52—Cost study of order buyers, 1932;
Exhibit No. 56—Bachmann cost studies, 1931;
Exhibit No. 57—Salary questionnaires, 1931;

I. The following respondents' exhibits:

Exhibit No. 2—Year Book of Daily Drovers Journal, 1932;
Exhibit No. 8—Scale tickets;
[fol. 1687] Exhibit No. 9—Account sales;
Exhibit No. 11—Salary appraisals;
Exhibit No. 12—Mudd Cost studies, 1932;
Exhibit No. 16—Mudd Time study;
Exhibit No. 17—Distribution of salary and expense;
Exhibit No. 18—Mudd cost studies, 1932;
Exhibit No. 22—Correlation study by O'Neill;
Exhibit No. 23—Bulk line, median and weighted average costs.

The foregoing præcipe is stipulated as correct and sufficient and the defendant-appellees waive service of a copy thereof and of notice of filing thereof.

George I. Haight, Counsel for Appellants. Wendell Berge, Counsel for Appellees.

[fol. 1688] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 1689 & 1690] Citation, in usual form, filed April 18, 1935, omitted in printing.

[fol. 1691] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Dec. 26, 1935

I

Come now the appellants in the above entitled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

1. The Court erred in dismissing the petition and complaint and in refusing to make its interlocutory injunction permanent (Assignments of Error, Nos. 1, 37, 38).

2. The Findings of the Secretary of Agriculture and of the Court are not supported by the evidence (Assignments of Error Nos. 2, 3, 4, 5, 6, 7, 8, 24, 25, 26, 28, 33, 36).

3. The Orders of the Secretary of Agriculture are not supported by the findings or the evidence (Assignments of Error, Nos. 5, 6, 7, 8).

4. The rates, charges and practices prescribed by the Secretary of Agriculture are arbitrary, unreasonable, and confiscatory of the property of each of the petitioners and plaintiffs; and take the property of the petitioners and plaintiffs, and each of them, without due process of law in [fol. 1692] violation of the Constitution of the United States (Assignments of Error, Nos. 9, 10, 11, 22, 23, 39).

5. The Court erred in not finding that the Orders of the Secretary of Agriculture are based on erroneous rules of law (Assignment of Error, No. 12).

6. The Court erred in not finding that the Secretary's denial of petitions for rehearing was arbitrary and unreasonable (Assignment of Error, No. 13).

7. The costs found reasonable by the Secretary are inadequate, unreasonable and without relation to actual experience (Assignments of Error, Nos. 14, 15, 16).

8. Reimbursement to cover management and uninsurable risks is not profit (Assignments of Error, Nos. 17 and 32).

9. The Court erred in not finding that the classification of live stock into grades dependent upon weight and the prescribing of rates on a consignment rather than on a draft basis was arbitrary, unreasonable and without regard or relationship to cost (Assignment of Error, No. 18).

10. The Court erred in attributing to the Secretary of Agriculture the power to constitute himself the financial manager of a business and to substitute his judgment for that of the management of the business (Assignments of Error, Nos. 19, 27, 40).

11. The Court erred in not finding that the Secretary of Agriculture was arbitrary and unreasonable in not using any well-recognized statistical method in the determination of costs (Assignment of Error, No. 20).

[fol. 1693] 12. The Court erred in not finding that the Secretary did not make an adequate allowance for the functions of the owners (Assignment of Error, No. 21).

13. The Court erred in not finding that there is no evidence in the record of unnecessary, wasteful or extravagant expenditure (Assignments of Error, Nos. 25 and 26).

14. The Court erred in not finding that the performance prescribed by the Secretary per salesman was unreasonable and arbitrary (Assignment of Error, No. 29).

15. The Court erred in not finding that a compliance with the Secretary's Orders with reference to performance would throw out of employment necessary salesmen and that all of the evidence showed that such salesmen were necessary to perform the business of the petitioners and each of them (Assignment of Error, No. 30).

16. The Court erred in not finding that each of the plaintiffs and petitioners has operated its business at a loss since the effective date of the Orders of the Secretary (Assignment of Error, No. 31).

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17. The Court erred in finding that the Orders of the Secretary of Agriculture are supported by the authority of Tagg Bros. & Moorehead vs. United States, 280 U. S. 420 (Assignment of Error, No. 13).

18. The Court erred in not finding that the rates prescribed by the Secretary will not return a reasonable profit [fols. 1694 & 1695] to any plaintiff and petitioner (Assignments of error, Nos. 35, 39).

19. The Court erred in finding that the Secretary was justified in refusing to accept appraised salaries of owners (Assignment of Error, No. 41).

The appellants, plaintiffs and petitioners below, rely upon each and all of the assignments of error.

II

And the appellants further state that all of the record certified by the trial court and filed in this Court should be printed by the Clerk of this Court for the hearing of this cause, except those exhibits identified in the præcipe for record on appeal to be transmitted to this Court as physical exhibits.

Geo. I. Haight, John S. Boyd, M. K. Hobbs, Counsel for Appellants.

Dated Chicago, Illinois, December 24, 1935.

[fols. 1696 & 1697] PROOF OF SERVICE

STATE OF ILLINOIS,
County of Cook, ss:

M. K. Hobbs, being first duly sworn, on oath states that he is one of the counsel for the Appellants in the above entitled cause; that he served the Appellants' Statement Of Points To Be Relied Upon And Designation Of Parts Of The Record To Be Printed, upon counsel for the defendants-appellees by depositing in the United States mails at Chicago, Illinois, in properly stamped and addressed envelopes, a copy each to Michael Igoe, U. S. District Attorney, Northern District of Illinois, and Wendell Berge, Spe-

cial Assistant Attorney General, Washington, D. C. on December 24, 1935 simultaneously with the mailing of the original to the Clerk of the Supreme Court.

Further affiant saith not.

M. K. Hobbs.

Subscribed and sworn to before me this 24th day of December, 1934. Frances Savage, Notary Public. (Seal of Frances Savage, Notary Public, Cook County, Ill.)

[fol. 1698] [File endorsement omitted.]

Endorsed on cover: Enter George I. Haight. File No. 40,209. N. Illinois, D. C. U. S. Term No. 655. C. H. Acker, doing business as C. H. Acker & Company, et al., appellants, vs. The United States of America, Henry A. Wallace, Secretary of Agriculture, et al. Filed December 23, 1935. Term No. 655, O. T., 1935.